S. HRG. 99-794

COMPACT OF FREE ASSOCIATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S.J. Res. 325

TO APPROVE THE "COMPACT OF FREE ASSOCIATION" BETWEEN THE UNITED STATES AND THE GOVERNMENT OF PALAU, AND FOR OTHER PURPOSES

MAY 9, 1986

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COMPACT OF FREE ASSOCIATION

FRIDAY, MAY 9, 1986

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m., in room SD-366, Dirksen Senate Office Building, Hon. James A. McClure (chairman) presiding.

Present: Senators McClure and Murkowski.

Also present: Allen Stayman, professional staff member; and D. Michael Harvey, chief counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. The committee will come to order.

Today, the Committee on Energy and Natural Resources will receive testimony on Senate Joint Resolution 325, to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

This hearing will conclude a series of hearings that the committee has held regarding the future political status of the Trust Territory of the Pacific Islands. The most recent of these hearings was an oversight hearing on Micronesian status negotiations held on February 27, 1986.

The Republic of Palau is one of the four governments comprising the Trust Territory of the Pacific Islands. The Congress has previously approved agreements with the other three governments. This compact, if approved, would govern relations between the United States and Palau in the post-trusteeship period and would establish a basis along with the other agreements, for termination of the trusteeship.

Because many of the issues regarding future Micronesian status have already been addressed, it is not necessary to review those in detail today. It is the purpose of today's hearing to examine those issues of particular relevance to Palau and to the administration's effort to terminate the trusteeship.

First, how is this compact with Palau different from the compact negotiated and recently approved by the Congress with the Federated States of Micronesia and the Republic of the Marshall Islands?

Second, has this compact and its approval process adequately resolved the conflict which apparently existed between the Palau Constitution and the provisions of the previously negotiated compacts regarding United States security and defense responsibilities?

And, finally, what are the administration's plans for proceeding with termination and post-trusteeship implementation?

Of particular concern to me with regard to this broad question are the mechanics of funding and implementing these agreements, and the expectations of the United Nations' consideration of termination.

[The text of S.J. Res. 325 follows:]

II

99TH CONGRESS
2D SESSION

S. J. RES. 325

To approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 16 (legislative day, APRIL 8), 1986

Mr. MCCLURE (by request) introduced the following joint resolution; which was read twice and referred to the Committee on Energy and Natural Resources

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JOINT RESOLUTION

To approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the Trusteeship Agreement for the former Japanese Mandated Islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

Whereas the United States, in accordance with the Trusteeship Agreement, the Charter of the United Nations and the objectives of the international trusteeship system, has promoted the development of the peoples of the Trust Territory toward self-government or independence as appropriate to the particular circumstances of the Trust Territory and its

peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of Palau expressed through their freely-elected representatives and by the official pronouncements and enactments of their lawfully constituted government, and in consideration of its own obligations under the Trusteeship Agreement to promote self-determination, entered into political status negotiations with representatives of the people of Palau; and

Whereas these negotiations resulted in the "Compact of Free Association" between the United States and Palau which, together with its related agreements, was signed by the United States and by Palau on January 10, 1986; and

Whereas the Compact of Free Association was approved by a majority of the people of Palau in a United Nations-observed referendum conducted on February 21, 1986; and

Whereas the Compact of Free Association has been approved by the Government of Palau in accordance with its constitutional processes, thus completing fully for Palau its domestic approval processes with respect to the Compact as contemplated in Compact Section 411: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Compact of Free Association, the text of which follows, is hereby approved and the President is authorized to agree to an effective date for and thereafter to implement the Compact of Free Association, having taken into account any

procedures with respect to the United Nations for termination of the Trusteeship Agreement:

SEC. 1.

COMPACT OF FREE ASSOCIATION

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PALAU

Affirming that their Governments and the relationship between their Governments are founded upon respect for human rights and fundamental freedoms for all, and

Affirming the common interests of the United States of America and the people of Palau in creating close and mutually beneficial relationships through a free and voluntary association of their Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and self-sufficiency of the people of Palau; and

Recognizing that their previous relationship has been based upon the International Trusteeship System of the United Nations Charter; and that pursuant to Article 76 of the Charter, the peoples of the Trust Territory have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they have, through their freely-expressed wishes, adopted a Constitution appropriate to their particular circumstances; and

Recognizing their common desire to terminate the Trusteeship and establish a new government-to-government relationship in accordance with a new political status based on the freely-expressed wishes of the people of Palau and appropriate to their particular circumstances; and

Recognizing that the people of Palau have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of their Government into this Compact of Free Association by the people of Palau constitutes an exercise of their sovereign right to self-determination;

NOW, THEREFORE, AGREE to enter into relationship of free association which provides a full measure of self-government for the people of Palau; and

FURTHER AGREE that the relationships of free association derives from and is as set forth in this Compact; and that, during such relationships of free association, the respective rights and responsibilities of the Government of the United States and the Government of the freely associated state of Palau in regard to this relationship of free association derives from and is as set forth in this Compact.

TITLE ONE

GOVERNMENT RELATIONS

Article I

Self-government

Section 111

The people of Palau, acting through their duly elected government established under their constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Republic of Palau has the capacity to conduct foreign affairs in its own name and right, except as otherwise provided in this Compact and the Government of the United States recognizes that the Government of Palau, in the exercise of this capacity, may enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(b) In the conduct of its foreign affairs the Government of Palau confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support application by the Government of Palau for membership or

other participation in regional or international organizations as may be mutually agreed. The Government of the United States agrees to accept citizens of Palau for training and instruction at the United States Foreign Service Institute, established under 22 U.S.C. 4021, or similar training under terms and conditions to be mutually agreed.

Section 123

In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of Palau shall consult with the Government of the United States. The Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of Palau on matters which the Government of the United States regards as relating to or affecting the Government of Palau, and shall provide, on a regular basis, information on regional foreign policy matters.

Section 124

(a) The Government of Palau has authority to conduct its foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and nonliving resources from the sea, seabed or subsoil to the full extent recognized under international law.

(b) The Government of Palau has jurisdiction and sovereignty over its territory, including its land and internal

waters, territorial seas, the airspace superjacent thereto only to the extent recognized under international law.

Section 125

Except as otherwise provided in this Compact or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as administering authority which have resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact are no longer assumed and enjoyed by the Government of the United States.

Section 126

The Government of the United States shall accept responsibility for those actions taken by the Government of Palau in the area of foreign affairs, only as may from time to time be expressly and mutually agreed.

Section 127

The Government of the United States may assist or act on behalf of the Government of Palau in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of Palau undertaken with the assistance or through the agency

of the Government of the United States pursuant to this Section unless expressly agreed.

Section 128

At the request of the Government of Palau and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of Palau for travel outside of Palau the Marshall Islands, the Federated States of Micronesia, the United States and its territories and possessions.

Article III

Communications

Section 131

(a) The Government of Palau has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a related agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

(1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency

assignments to radio communications stations in Palau; and to submit to the International Frequency Registration Board seasonal schedules for the broadcasting stations in Palau in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kHz and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and

(2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, and the Communications Satellite Act of 1962, 47 U.S.C. 721 *et seq.*, over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.

(b) The Government of Palau may elect at any time to undertake the functions enumerated in Section 131(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the Government of Palau the notification authority referred to in Section 131(a) and all rights deriving

from the previous exercise of any such notification authority by the Government of the United States.

Section 132

The Government Palau shall permit the Government of the United States to operate telecommunications services in Palau to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of related agreements which shall come into effect simultaneously with this Compact.

Article IV

Immigration

Section 141

(a) Any person in the following categories may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26):

(1) a person who, on the day preceding the effective date of this Compact, is a citizen of Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become a citizen of Palau;

(2) a person who acquires the citizenship of Palau, at birth, on or after the effective date of the Constitution of Palau; or

(3) a naturalized citizen of Palau, who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence.

Such persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States.

(b) The right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to nondiscriminatory limitations provided for:

(1) in statutes or regulations of the United States; or

(2) in those statutes or regulations of the territory or possession concerned which are authorized by the laws of the United States.

(c) Section 141(a) does not confer on a citizen of Palau, the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of Palau from

otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may enter into, lawfully engage in occupations, and reside in Palau, subject to the right of that Government to deny entry to or deport any such citizen or national as an undesirable alien. A citizen or national of the United States may establish habitual residence or domicile in Palau only in accordance with the laws of Palau. This subsection is without prejudice to the right of the Government of Palau to regulate occupations in Palau in a non-discriminatory manner.

(b) With respect to the subject matter of this Section, the Government of Palau shall accord to citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries; any denial of entry to or deportation of a citizen or national of the United States as an undesirable alien must be pursuant to reasonable statutory grounds.

Section 143

(a) The privileges set forth in Section 141 shall not apply to any person who takes an affirmative step to preserve or acquire a citizenship or nationality other than that of Palau.

(b) Every person having the privileges set forth in Sections 141 and 142 who possesses a citizenship or nationality other than that of Palau or the United States ceases to have these privileges two years after the effective date of this Compact, or within six months after becoming 21 years of age, whichever comes later, unless such person executes an oath of renunciation of that other citizenship or nationality.

Section 144

(a) A citizen or national of the United States who, after notification to the Government of the United States of an intention to employ such person by the Government of Palau, commences employment with that Government shall not be deprived of his United States nationality pursuant to Section 349(a)(2) and (a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1481 (a)(2) and (a)(4).

(b) Upon such notification by the Government of Palau, the Government of the United States may consult with or provide information to the notifying Government concerning the prospective employee, subject to the provisions of the Privacy Act, 5 U.S.C. 552a.

(c) The requirement of prior notification shall not apply to those citizens or nationals of the United States who are employed by the Government of Palau on the effective date of this Compact with respect to the positions held by them at that time.

Article V

Representation

Section 151

The Government of the United States and the Government of Palau may establish and maintain representative offices in the capitals of the other.

Section 152

(a) The premises of such representative offices, and their archives wherever located, shall be inviolable. The property and assets of such representative offices shall be immune from search, requisition, attachment and any form of seizure unless such immunity is expressly waived. Official communications in transit shall be inviolable and accorded the freedom and protections accorded by recognized principles of international law to official communications of a diplomatic mission.

(b) Persons designated by the sending Government may serve in the capacity of its resident representatives with the consent of the receiving Government. Such designated persons shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions as such representatives, except insofar as such immunity may be expressly waived by the sending Government. While serving in a resident representative capacity, such designated persons shall not be liable to arrest or detention pending trial, except

in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents.

(c) The sending Governments and their respective assets, income and other property shall be exempt from all direct taxes, except those direct taxes representing payment for specific goods and services, and shall be exempt from all customs duties and restrictions on the import or export of articles required for the official functions and personal use of their representatives and representative offices.

(d) Persons designated by the sending Government to serve in the capacity of its resident representatives shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations.

(e) The privileges, exemptions and immunities accorded under this Section are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government to which they are assigned.

Article VI

Environmental Protection

Section 161

The Government of the United States and the Government of Palau declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Palau.

Section 162

(a) The Government of the United States and the Government of Palau agree that with respect to the activities of the Government of the United States in Palau, and with respect to substantively equivalent activities of the Government of Palau, each of the Governments shall be bound by such environmental protection standards as may be mutually agreed for the purpose of carrying out the policy set forth in this Compact.

Section 163

In order to carry out the policy set forth in this Article, the Government of the United States and the Government of Palau agree to the following undertakings.

(a) The Government of the United States:

(1) shall apply environmental standards substantively similar to those in effect on the day preceding the effective date of this Compact to any activity re-

quiring the preparation of an Environmental Impact Statement under the provisions of the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 *et seq.*

(2) shall develop, prior to conducting any activity included within the category described in this Section, appropriate mechanisms, including regulations or other standards and procedures, to regulate such activity in Palau in a manner appropriate to the special governmental relationship set forth in this Compact. The Government of the United States shall provide the Government of Palau with the opportunity to comment formally during the development of such mechanisms.

(b) The Government of Palau shall develop standards and procedures to protect the environment of Palau. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Government of Palau, taking into account the particular environment of Palau, shall develop standards for environmental protection substantively similar to those required of the Government of the United States by Section 163(a)(1) prior to conducting activities in Palau substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 163(a), including any standard or procedure applicable thereunder, and Section 163(b) may be modified or

superseded in whole or in part by agreement of the Government of the United States and the Government of Palau.

(d) Disputes arising under this Article, except for Section 163(e), shall be resolved exclusively in accordance with Article II of Title Four.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard or procedure which may be applicable under this Article if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of Palau shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of Palau.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact or its related agreements, the application of the laws of the United States to the

Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceases with respect to Palau as of the effective date of this Compact.

Section 172

(a) Every citizen of Palau who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any nonresident alien.

(b) The Government and every citizen of Palau shall be considered a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701–706.

Section 173

The Government of the United States and the Government of Palau, agree to adopt and enforce such measures, consistent with this Compact and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in Palau pursuant to this Compact and its related agreements and by that Government in the United States pursuant to this Compact and its related agreements.

Section 174

Except as otherwise provided in this Compact and its related agreements:

(a) The Government of Palau shall be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall be immune from the jurisdiction of the courts of Palau.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the Trust Territory of the Pacific Islands or the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the effective date of this Compact; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands, pending as of the effective date of this Compact, against the Government of the Trust Terri-

tory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in Section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact shall be adjudicated in the same manner as a claim adjudicated according to Section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in Section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States

Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of Palau, shall not be immune from the jurisdiction of the courts of United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of Palau in any case in which the action is based on a commercial activity of the defendant Government carried out where the action is brought, or in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought. This subsection shall apply only to actions based on commercial activities entered into or injuries or losses suffered on or after the effective date of this Compact.

Section 175

A separate agreement, which shall come into effect simultaneously with this Compact, shall be concluded between the Government of the United States and the Government of Palau regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners. The separate agreement shall have the force of law. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188–3195, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of

the United States governing the transfer of prisoners, including 18 U.S.C. 4100–4115, shall be applicable to the transfer of prisoners under the separate agreement.

Section 176

The Government of Palau confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of Palau to grant relief from judgments in appropriate cases.

Section 177

(a) Federal agencies of the Government of the United States which provide services and related programs in Palau are authorized to settle and pay tort claims arising in Palau from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in Section 177(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under Section 177(a) which cannot be settled under Section 177(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of Palau shall provide for:

(1) the administrative settlement of claims referred to in Section 177(a), including designation of local agents in Palau, such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such related agreements; and

(2) arbitration, referred to in Section 177(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to Section 177(a).

(d) The provisions of Section 174(d) shall not apply to claims covered by this Section.

TITLE TWO

ECONOMIC RELATIONS

Article I

Grant Assistance

Section 211

In order to assist the Government of Palau in its efforts to advance the well-being of the people of Palau and in recognition of the special relationship that exists between the United States and Palau, the Government of the United States shall provide to the Government of Palau on a grant basis the following amounts:

(a) $12 million annually for ten years commencing on the effective date of this Compact, and $11 million annually for five years commencing on the tenth anniversary of the

effective date of this Compact, for current account operations and maintenance purposes, which amounts commencing on the fourth anniversary of the effective date of this Compact shall include a minimum annual distribution of $5 million from the fund specified in Section 211(f).

(b) $2 million annually for fourteen years commencing on the first anniversary of the effective date of this Compact as a contribution to efforts aimed at achieving increased self-sufficiency in energy production, of which annual amounts not less than $500,000 shall be devoted to the energy needs of those parts of Palau not served by its central power-generating facility.

(c) $150,000 annually for fifteen years commencing on the effective date of this Compact as a contribution to current account operations and maintenance of communications systems, and the sum of $1.5 million, to be made available concurrently with the grant assistance provided during the first year after the effective date of this Compact, for the purpose of acquiring such communications hardware as may be located within Palau or for such other current or capital account activity as the Government of Palau may select.

(d) $631,000 annually on a current account basis for fifteen years commencing on the effective date of this Compact for the purposes set forth below:

(1) for the surveillance and enforcement by Government of Palau of its maritime zone;

(2) for health and medical programs, including referrals to hospital and treatment centers; and

(3) for a scholarship fund to support the post-secondary education of citizens of Palau attending United States accredited, post-secondary institutions in Palau, the United States, its territories and possessions, and states in free association with the United States. The curricular criteria for the award of scholarships shall be designed to advance the purposes of the plan referred to in Section 231.

(e) The sum of $666,800 as a contribution to the commencement of activities pursuant to Section 211(d)(1).

(f) The sum of $66 million on the effective date of this Compact, and the sum of $4 million concurrently with the grant assistance to be made available during the third year after the effective date of this Compact, to create a fund to be invested by the Government of Palau in issues of bonds, notes or other redeemable instruments of the Government of the United States or other qualified instruments which may be identified by mutual agreement of the Government of the United States and the Government of Palau. Investment of the fund in qualified instruments of United States nationality, and the distribution of sums derived from such investment to

the Government of Palau, shall not be subject to any form of taxation by the United States or its political subdivisions. The Government of the United States and the Government of Palau shall set forth in a separate agreement, which shall come into effect simultaneously with this Compact, provisions for the investment, management and review of the fund so as to allow for an agreed minimum annual distribution from its accrued principal and interest commencing upon the effective date of this Compact for fifty years. The objective of this sum is to produce an average annual distribution of $15 million commencing on the fifteenth anniversary of this Compact for thirty-five years. Any excess or variance from the agreed minimum annual distributions which may be produced from these sums shall accrue to or be absorbed by the Government of Palau unless otherwise mutually agreed in accordance with the provisions of the separate agreement referred to in this paragraph. The annual distributions produced from these sums are not subject to Sections 215 and 236.

Section 212

In order to assist the Government of Palau in its efforts to advance the economic development and self-sufficiency of the people of Palau and in recognition of the special relationship that exists between the United States and Palau, the Government of the United States shall provide:

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(a) To the people of Palau, a road system in accordance with mutually agreed specifications, the construction of which shall be completed prior to the sixth anniversary of the effective date of this Compact; and

(b) To the Government of Palau, the sum of $36 million, during the first year after the effective date of this Compact, for capital account purposes.

Section 213

The Government of the United States shall provide on a grant basis to the Government of Palau the sum of $5.5 million in conjunction with Article II of Title Three. This sum shall be made available concurrently with the grant assistance provided pursuant to this Article during the first year after the effective date of this Compact. The Government of Palau, in its use of such funds, shall take into account the impact of the activities of the Government of the United States in Palau.

Section 214

All funds previously appropriated to the Trust Territory of the Pacific Islands for the Government of Palau which are unobligated by the Government of the Trust Territory as of the effective date of this Compact shall accrue to the Government of Palau for the purposes for which such funds were originally appropriated as determined by the Government of the United States.

Section 215

Except as otherwise provided, the amounts stated in Sections 211(a), 211(b), 211(c) and 212(b) shall be adjusted for each fiscal year by the percent which equals two-thirds of the percentage change in the United States Gross National Product Implicit Price Deflator, or seven percent, whichever is less in any one year, using the beginning of Fiscal Year 1981 as the base.

Article II

Program Assistance

Section 221

(a) The Government of the United States shall make available to Palau, in accordance with and to the extent provided in the separate agreement referred to in Section 232, without compensation and at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Compact, the services and related programs:

(1) of the United States Weather Service;

(2) provided pursuant to the Postal Reorganization Act, 39 U.S.C. 101 *et seq.*;

(3) of the United States Federal Aviation Administration; and

(4) of the United States Civil Aeronautics Board or its successor agencies which has the authority to

implement the provisions of paragraph 5 of Article IX of such separate agreements, the language of which is incorporated into this Compact.

(b) The Government of the United States, recognizing the special needs of the Palau particularly in the fields of education and health care, shall make available, as provided by the laws of the United States,

(1) the annual amount of $2 million which shall be allocated in accordance with the provisions of the separate agreement referred to in Section 232; and

(2) the sums of $4.3 million, $2.9 million and $1.5 million, respectively, during the first, second and third years after the effective date of this Compact, which sums shall be used by the Government of Palau as current account funds to finance programs similar to those programs of the United States that applied to Palau prior to the effective date of this Compact and that provided financial assistance for education to any institution, agency, organization or permanent resident of Palau or to the College of Micronesia.

(c) The Government of the United States shall make available to Palau such alternate energy development projects, studies and conservation measures as are applicable to the Trust Territory of the Pacific Islands on the day pre-

ceding the effective date of this Compact, for the purposes and duration provided in the laws of the United States.

(d) The Government of the United States shall have and exercise such authority as is necessary for the purposes of this Article and as is set forth in the related agreements referred to in Section 232, which shall also set forth the extent to which services and programs shall be provided to Palau.

Section 222

The Government of Palau may request, from time to time, technical assistance from the Federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its law and which shall grant such technical assistance in a manner which gives priority consideration to Palau over other recipients not a part of the United States, its territories or possessions and equivalent consideration to Palau with respect to other states in Free Association with the United States.

Section 223

The citizens of Palau who are receiving post-secondary education assistance from the Government of the United States on the day preceding the effective date of this Compact shall continue to be eligible, if otherwise qualified, to receive such assistance to complete their academic programs for a maximum of four years after the effective date of this Compact.

Section 224

The Government of the United States and the Government of Palau may agree from time to time to the extension to Palau of additional United States grant assistance and of United States services and programs as provided by the laws of the United States.

Article III

Administrative Provisions

Section 231

(a) The annual expenditure by the Government of Palau of the grant amounts specified in Article I of this Title shall be in accordance with an official national development plan promulgated by the Government of Palau and concurred in by the Government of the United States prior to the effective date of this Compact. This plan may be amended from time to time by the Government of Palau.

(b) The Government of the United States and the Government of Palau recognize that the achievement of the goals of the plan referred to in this Section depends upon the availability of adequate internal revenue as well as economic assistance from sources outside of Palau, including the Government of the United States, and may, in addition, be affected by the impact of exceptional, economically adverse circumstances. The Government of Palau shall therefore report annually to the President of the United States and to the Congress of the United States on the implementation of this plan

and on its use of the funds specified in this Article. This report shall outline the achievements of the plan to date and the need, if any, for an additional authorization and appropriation of economic assistance for that year to account for any exceptional, economically adverse circumstances. The availability of such additional economic assistance from the Government of the United States shall be subject to the authorization and appropriation of funds by the Government of the United States.

Section 232

The specific nature, extent and contractual arrangements of the services and programs provided for in Section 221 as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in Palau, and other arrangements in connection with a service or program furnished by the Government of the United States, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 233

The Government of the United States, in consultation with the Government of Palau, shall determine and implement procedures for the periodic audit of all grants and other assistance made under this Title. Such audits shall be conducted at no cost to the Government of Palau.

Section 234

Title to the property of the Government of the United States situated in the Trust Territory of the Pacific Islands and in Palau or acquired for or used by the Government of the Trust Territory of the Pacific Islands on or before the day preceding the effective date of this Compact shall, without reimbursement or transfer of funds, vest in the Government of Palau as set forth in a separate agreement which shall come into effect simultaneously with this Compact. The provisions of this Section shall not apply to the personal property of the Government of the United States for which the Government of the United States determines a continuing requirement.

Section 235

(a) Funds held in trust by the High Commissioner of the Trust Territory of the Pacific Islands, in his official capacity, as of the effective date of this Compact shall remain available as trust funds to their designated beneficiaries. The Government of the United States, in consultation with the Government of Palau, shall appoint a new trustee who shall exercise the functions formerly exercised by the High Commissioner of the Trust Territory of the Pacific Islands.

(b) To provide for the continuity of administration, and to assure the Governments of Palau that the purposes of the

laws of the United States are carried out and that the funds of any other trust fund in which the High Commissioner of the Trust Territory of the Pacific Islands has authority of a statutory or customary nature shall remain available as trust funds to their designated beneficiaries, the Government of the United States agrees to assume the authority formerly vested in the High Commissioner of the Trust Territory of the Pacific Islands.

Section 236

Except as otherwise provided, approval of this Compact by the Government of the United States shall constitute a pledge of the full faith and credit of the United States for the full payment of the sums and amounts specified in Article I of this Title. The obligation of the Government of the United States under Article I of this Title shall be enforceable in the United States Claims Court, or its successor court, which shall have jurisdiction in cases arising under this Section, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States.

Article IV

Trade

Section 241

Palau is not included in the customs territory of the United States.

Section 242

The President of the United States shall proclaim the following tariff treatment for articles imported from Palau which shall apply during the period of effectiveness of this Title:

(a) Unless otherwise excluded, articles imported from Palau, subject to the limitations imposed under sections 503(b) and 504(c) of title 5 of the Trade Act of 1974 (19 USC 2463(b): 2464(c)), shall be exempt from duty.

(b) Only canned tuna provided for in item 112.30 of the Tariff Schedules of the United States that is imported from the Federated States of Micronesia, the Marshall Islands and Palau during any calendar year not to exceed 10 percent of the United States consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty free treatment under this paragraph for any calendar year shall be counted against the aggregate quantity of canned tuna that is dutiable under rate column numbered 1 of such item 112.30 for that calendar year.

(c) The duty-free treatment provided under paragraph (1) shall not apply to:

(1) watches, clocks and timing apparatus provided for in sub-part E of part 2 of schedule 7 of the Tariff Schedules of the United States;

(2) buttons (whether finished or not finished) provided for in item 745.32 of such Schedules;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of chapter V of the Trade Act of 1974 (19 USC 2461 et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of Palau, an appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(b)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from Palau which are not exempt from any duty under paragraphs (a), (b), (c) and (d) of Section 242 shall be subject to the rates of duty set forth in column numbered 1 of the Tariff Schedules of the United States and all products of the United States imported into Palau shall

receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage, or use.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of Palau. Should the Government of Palau act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of Palau may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as such Government deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact, be made according to the United States Internal Revenue Code.

Section 253

A citizen of Palau, domiciled therein and who is a nonresident and not a citizen of the United States, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States.

Section 254

(a) In determining any income tax imposed by the Government of Palau, the Government of Palau shall have authority to impose tax upon income derived by a resident of Palau from sources without Palau in the same manner and to the same extent as the Government of Palau imposes tax upon income derived from within its jurisdiction. If the Government of Palau exercises such authority as provided in this subsection, any individual resident of Palau who is subject to tax by the Government of the United States on income which is also taxed by the Government of Palau shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. For purposes of this Section, the term "resident of Palau" shall be deemed to include any person who was physically present in Palau for a period of 183 or more days during any taxable year. The relief from liability referred to in this subsection means only

(1) relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and (2) relief in the form of the exclusion under section 911 of the United States Internal Revenue Code of 1954.

(b) If the Government of Palau subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in Section 254(a).

Section 255

(a) For purposes of section 936 of the Internal Revenue Code of 1954 Palau shall be treated as if it was a possession of the United States.

(b) Subsection (a) of this Section shall not apply to Palau for any period after December 31, 1986, during which there is not in effect between Palau and the United States an exchange of information agreement of the kind described in section 274(h)(6)(C) (other than clause (ii) thereof) of the Internal Revenue Code of 1954.

(c) If the tax incentives extended to Palau under subsection (a) of this Section are, at any time during which the Compact is in effect, reduced, the United States Secretary of

the Treasury shall negotiate an agreement with the Government of Palau under which, when such agreement is approved by law, Palau will be provided with benefits substantially equivalent to such reduction in benefits. If within the 1-year period after the date of the enactment of the Act making the reduction in benefits, an agreement negotiated under the preceding sentence is not approved by law, the matter shall be submitted to the Arbitration Board established pursuant to Section 424. For purposes of Article V of this Title, the Secretary of the Treasury or his delegate shall be the member of such Board representing the Government of the United States. Any decision of such Board in the matter when approved by law shall be binding on the United States, except that such decision rendered is binding only as to whether the United States has provided the substantially equivalent benefits referred to in this subsection.

(d) For purposes of section 274(h)(3)(A) of the Internal Revenue Code of 1954, the term "North American area" shall include Palau.

Section 256

This Article shall apply to income earned, and transactions occurring, after September 30, 1985, in taxable years ending after such date.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

Section 311

The territorial jurisdiction of the Republic of Palau shall be completely foreclosed to the military forces and personnel or for the military purposes of any nation except the United States of America, and as provided for in Section 312.

Section 312

The Government of the United States has full authority and responsibility for security and defense matters in or relating to Palau. Subject to the terms of any agreements negotiated pursuant to Article II of this Title, the Government of the United States may conduct within the lands, water and airspace of Palau the activities and operations necessary for the exercise of its authority and responsibility under this Title. The Government of the United States may invite the armed forces of other nations to use military areas and facilities in Palau in conjunction with and under the control of United States Armed Forces.

Section 313

The Government of Palau shall refrain from actions which the Government of the United States determines, after consultation with that Government, to be incompatible with

its authority and responsibility for security and defense matters in or relating to Palau.

Article II

Defense Sites and Operating Rights

Section 321

The Government of the United States may establish and use defense sites in Palau, and may designate for this purpose land and water areas and improvements in accordance with the provisions of a separate agreement which shall come into force simultaneously with this Compact.

Section 322

(a) When the Government of the United States desires to establish or use such a defense site specifically identified in the separate agreement referred to in Section 321, it shall so inform the Government of Palau which shall make the designated site available to the Government of the United States for the duration and level of use specified.

(b) With respect to any site not specifically identified in the separate agreement referred to in Section 321, the Government of the United States shall inform the Government of Palau, which shall make the designated site available to the Government of the United States for the duration and level of use specified, or shall make available one alternative site acceptable to the Government of the United States. If such alternative site is unacceptable to the Government of the

United States, the site first designated shall be made available after such determination.

(c) Compensation in full for designation, establishment or use of defense sites is provided in Title Two of this Compact.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in Palau, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 324

In the exercise in Palau of its authority and responsibility under this Title, the Government of the United States shall not use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare and the Government of Palau assures the Government of the United States that in carrying out its security and defense responsibilities under this Title, the Government of the United States has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact and its related agreements, the Government of the United States, exclusively, shall assume and enjoy, as to Palau, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as administering authority of the Trust Territory of the Pacific Islands as of the day preceding the effective date of this Compact; and

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in Palau. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of Palau.

Article IV

Service in the Armed Forces of the United States

Section 341

Any citizen of Palau entitled to the privileges of Section 131 of this Compact shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the

United States so long as such person does not establish habitual residence in the United States, its territories or possessions.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from Palau as may be nominated by the Government of Palau, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195; and

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295b(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to Section 342(b) of this Compact.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of Palau shall establish a joint committee empowered to consider disputes which may arise under the implementation of this Title and its related agreements.

(b) The membership of the joint committee shall comprise selected senior officials of each of the participating Governments. The senior United States military commander in the Pacific area shall be the senior United States member of

the joint committee. For the meetings of the joint committee, each of the Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the joint committee shall meet semi-annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The joint committee also shall meet promptly upon request of either of its members. Upon notification by the Government of the United States, the joint committee shall meet promptly in combined session with other such joint committees so notified. The joint committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree.

(d) Unresolved issues in the joint committee shall be referred to the Government of the United States and the Government of Palau for resolution, and the Government of Palau shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under this Compact, the Government of the United States shall accord due respect to the authority and responsibility of the Government of Palau under this Compact and to the responsibility of the Government of Palau to assure the well-being of Palau and its people. The Government of the United States and the Government of Palau agree that the authority and responsibility of the United States set forth in this Title are exercised for the mutual security and benefit of Palau and the United States, and that any attack on Palau would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, or threat thereof, the Government of the United States would take action to meet the danger to the United States and Palau in accordance with its constitutional processes.

Section 353

(a) The Government of the United States shall not include the Government of Palau as a named party to a formal declaration of war, without the consent of the Government of Palau.

(b) Absent such consent, this Compact is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the

citizens, nationals or Government of Palau which arise out of armed conflict subsequent to the effective date of this Compact and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under Section 353(b)(1) shall be treated as if they were made by citizens of the United States.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

This Compact shall come into effect upon mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the Government of Palau, subsequent to completion of the following:

(a) Approval by the Government of Palau in accordance with its constitutional processes;

(b) Approval by the people of Palau in a referendum called on this Compact; and

(c) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States and the Government of Palau shall confer promptly at the request of the other on matters relating to the provisions of this Compact or of its related agreements.

Section 422

In the event the Government of the United States or the Government of Palau, after conferring pursuant to Section 421, determines that there is a dispute and gives written notice thereof, the Governments shall make a good faith effort to resolve the dispute among themselves.

Section 423

If a dispute between the Government of the United States and the Government of Palau cannot be resolved within 90 days of written notification in the manner provided in Section 422, either party to the dispute may refer it to arbitration in accordance with Section 424.

Section 424

Should a dispute be referred to arbitration as provided for in Section 423, an arbitration board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision

shall be advisory. Arbitration shall occur according to the following terms:

(a) An arbitration board shall consist of a chairman and two other members, each of whom shall be a citizen of a party to the dispute and each of the two parties to the dispute shall appoint one member to the arbitration board. If either party to the dispute does not fulfill the appointment requirements of this Section within 30 days of referral of the dispute to arbitration pursuant to Section 423, its member on the arbitration board shall be selected from its own standing list by the other party to the dispute. Each government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a chairman within 15 days after selection of the other members of the arbitration board. Failing agreement on a chairman, the chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) The arbitration board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles, I, II, III, IV, and VI of Title One, Title Two, Title Four and their related agreements.

(c) Each member of the arbitration board shall have one vote. Each decision of the arbitration board shall be reached by majority vote.

(d) In determining any legal issue, the arbitration board may have reference to international law and, in such refer-

ence, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The arbitration board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact. Unless the parties provide otherwise by mutual agreement, the arbitration board shall endeavor to render its decision within 30 days after the conclusion of arguments. The arbitration board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the arbitration board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of Palau.

Article III

Amendment and Review

Section 431

The provisions of this Compact may be amended at any time by mutual agreement of the Government of the United States and the Government of Palau in accordance with their respective consititutional processes.

Section 432

Upon the fifteenth and thirtieth and fortieth anniversaries of the effective date of this Compact, the Government of the United States and the Government of Palau shall formal-

ly review the terms of this Compact and its related agreements and shall consider the overall nature and development of their relationship. In these formal reviews, the governments shall consider the operating requirements of the Government of Palau and its progress in meeting the development objectives set forth in the plan referred to in Section 231(a). The governments commit themselves to take specific measures in relation to the findings of conclusions resulting from the review. Any alteration to the terms of this Compact or its related agreements shall be made by mutual agreement, the terms of this Compact and its related agreements shall remain in force until otherwise amended or terminated pursuant to Title Four of this Compact.

Article IV

Termination

Section 441

This Compact may be terminated by mutual agreement and subject to Section 451.

Section 442

This Compact may be terminated by the Government of the United States subject to Section 452, such termination to be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended.

Section 443

This Compact shall be terminated, pursuant to its constitutional processes, by the Government of Palau subject to Section 452 if the people of Palau vote in a plebiscite to terminate. The Government of Palau shall notify the Government of the United States of its intention to call such a plebiscite which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by such government in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, such government shall, upon certification of the results of the plebiscite, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

Should termination occur pursuant to Section 441, economic assistance by the Government of the United States shall continue on mutually agreed terms.

Section 452

Should termination occur pursuant to Section 442 or 443, the following provisions of this Compact shall remain in full force and effect until the fiftieth anniversary of the effective date of this Compact and thereafter as mutually agreed:

(a) Article I and Section 233 of Title Two;

(b) Title Three; and

(c) Articles II, III, V and VI of Title Four.

Section 453

Notwithstanding any other provision of this Compact:

(a) The provisions of Section 311, even if Title Three should terminate, are binding and shall remain in effect for a period of 50 years and thereafter until terminated or otherwise amended by mutual consent;

(b) The related agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms; and

(c) The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of Palau.

Section 454

Any provision of this Compact which remains in effect by operation of Section 452 shall be construed and imple-

mented in the same manner as prior to any termination of this Compact pursuant to Section 442 or 443.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the administrative districts of Kosrae, Yap, Palau, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, Section 1, in force on January 1, 1979. This term does not include the area of the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "Palau" is used in a geographic sense and includes the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter

recognized by the Government of the United States consistent with the Compact and its related agreements.

(d) "Government of Palau" means the Government established and organized by the Constitution of Palau including all the political subdivisions and entities comprising that Government.

(e) "Habitual Residence" means a place of general abode or a principal, actual dwelling place of a continuing or lasting nature; provided, however, that this term shall not apply to the residence of any person who entered the United States for the purpose of full time studies as long as such person maintains that status, or who has been physically present in the United States or Palau for less then one year, or who is a dependent of a resident representative, as described in Section 152.

(f) For the purposes of Article IV of Title One of this Compact:

(1) "Actual Residence" means physical presence in Palau during eighty-five percent of the period of residency required by Section 141(a)(3); and

(2) "Certificate of Actual Residence" means a certificate issued to a naturalized citizen by the Government which has naturalized him stating that the citizen has complied with the actual residence requirement of Section 141(a)(3).

(g) "Defense Sites" means those land and water areas and improvements thereon in Palau reserved or acquired by the Government of Palau for use by the Government of the United States, as set forth in the related agreements referred to in Section 321.

(h) "Capital Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for:

(1) the construction or major repair of capital infrastructure; or

(2) public and private sector projects identified in the official overall economic development plan.

(i) "Current Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for recurring operational activities including infrastructure maintenance as identified in the annual budget justifications submitted yearly to the Government of the United States.

(j) "Official National Development Plan" means the documented program of annual development which identifies the specific policy and project activities necessary to achieve a specified set of economic goals and objectives during the period of free association, consistent with the economic assistance authority in Title Two. Such a document should include an analysis of population trends, manpower require-

ments, social needs, gross national product estimates, resource utilization, infrastructure needs and expenditures, and the specific private sector projects required to develop the local economy of Palau. Project identification should include initial cost estimates, with project purposes related to specific development goals and objectives.

(k) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(l) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

The Government of the United States and the Government of Palau shall conclude related agreements which shall come into effect and shall survive in accordance with their terms, and which shall be construed and implemented in a manner consistent with this Compact, as follows:

(a) Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to Palau Concluded Pursuant to Section 131 of the Compact of Free Association;

(b) Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in Palau, Concluded Pursuant to Section 132 of the Compact of Free Association;

(c) Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association;

(d) Agreement Regarding United States Economic Assistance to the Government of Palau Concluded Pursuant to Section 211(f) of the Compact of Free Association;

(e) Agreement Regarding Construction Projects in Palau Concluded Pursuant to Section 212(a) of the Compact of Free Association;

(f) Agreement Regarding Federal Programs and Services, Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association;

(g) Agreement Regarding Property Turnover, Concluded Pursuant to Section 234 of the Compact of Free Association;

(h) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in Palau Concluded Pursuant to Sections 321 and 322 of the Compact of Free Association; and

(i) Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association.

(j) Agreement regarding the Jurisdiction and Sovereignty of the Republic of Palau over its Territory and the Living and Non-living Resources of the Sea.

Article VII

Concluding Provisions

Section 471

(a) The Government of the United States and the Government of Palau agree that they have full authority under their respective constitutions to enter into this Compact and its related agreements and to fulfill all of their respective responsibilities in accordance with the terms of this Compact and its related agreements. The Governments pledge that they are so committed.

(b) The Government of the United States and the Government of Palau shall take all necessary steps, of a general or particular character, to ensure, not later than the effective date of this Compact, that their laws, regulations and administrative procedures are such as to effect the commitments referred to in Section 471(a).

(c) Without prejudice to the effects of this Compact under international law, this Compact has the force and effect of a statute under the laws of the United States.

Section 472

This Compact may be accepted, by signature or otherwise, by the Government of the United States and the Gov-

ernment of Palau. Each government shall possess an original English language version.

IN WITNESS THEREOF, the undersigned, duly authorized, have signed this Compact of Free Association which shall come into effect in accordance with its terms between the Government of the United States and the Government of Palau.

DONE AT _____, THIS _____ DAY OF _____, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

_____

DONE AT _____, THIS _____ DAY OF _____, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE

FOR THE GOVERNMENT

OF

THE REPUBLIC OF PALAU

_____

SEC. 2. (a) With respect to Section 321 of the Compact of Free Association and its related agreements, the jurisdictional provisions set forth in subsection (b) of this section shall apply only to the citizens and nationals of the United

States and aliens lawfully admitted to the United States for permanent residence who are in Palau.

(b) The defense sites of the United States established in Palau in accordance with the Compact of Free Association and its related agreements are within the special maritime and territorial jurisdiction of the United States as set forth in Section 7, Title 18, United States Code.

(i) Any person referred to in subsection (a) of this section who within or upon such defense sites is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the Territory of Guam by the laws thereof, in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(ii) The District Court of Guam shall have jurisdiction to try all criminal offenses against the United States, including the laws of Guam made applicable to the defense sites in Palau by virtue of subsection (b)(i) of this section, committed by any person referred to in subsection (a) of this section.

(iii) The District Court of Guam may appoint one or more magistrates for the defense sites in Palau. Such Magistrates shall have the power and the status of Magistrates appointed pursuant to chapter 43, title 28, United States Code, provided, however that such Magistrates shall have the

power to try persons accused of and sentence persons convicted of petty offenses, as defined in section 1(3), title 18, United States Code, including violations of regulations for the maintenance of peace, order, and health issued by the Commanding Officer on such defense sites, without being subject to the restrictions provided for in section 3401(b), title 18, United States Code.

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The CHAIRMAN. I would like to welcome our witnesses here today and to remind them that their statements will be made a part of the record in full. I would ask that statements be held to 10 minutes to provide more time for questions.

We will first hear from a panel: Hon. Fred M. Zeder II, the President's Personal Representative for Micronesian Status Negotiations; and Ms. Kittie Baier, the Deputy Assistant Secretary, Office of Territorial and International Affairs, on behalf of Richard Montoya.

If you two will come forward, please, take your places, we will proceed.

Welcome, Mr. Zeder, I am delighted to see you here and you are welcome, once again.

STATEMENT OF HON. FRED M. ZEDER II, THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS, ACCOMPANIED BY KITTIE BAIER, DEPUTY ASSISTANT SECRETARY FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR; JAMES BERG, POLITICAL ADVISOR, OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS; AND HOWARD HILLS, LEGAL ADVISOR, OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

Ambassador ZEDER. Thank you, Mr. Chairman, I am delighted to be here. I am also grateful to the members of this committee for providing me this opportunity to present the administration's position on the "Compact of Free Association" with Palau.

I am going to request, if I may, that the long, formal statement that I have be included in the record.

The CHAIRMAN. It will be.

Ambassador ZEDER. I would like to, before we begin, on a rather personal note, Mr. Chairman, thank you on behalf of myself and also members of OMSN for these hearings that we have had here. We are really truly grateful for your understanding and your patience and respect for the position that we are in representing the administration.

I think there have been times when our views have not been totally popular but we have tried to follow our instructions and you were very kind and understanding and gracious about it. We appreciate it.

The CHAIRMAN. That is a very generous comment, when we consider some of the difficulties we have had at various times in trying to understand what the process was, what the administration's position was. But I appreciate the comment and I want you to know that it is a mutual appreciation.

Ambassador ZEDER. Thank you. In a short version here, I would just like to point out a couple of things that I think are germane and need to go on the record. Not only on the record, but I think they will open up areas of discussion, particularly in view of some of your opening remarks in the areas that you are interested in talking about today.

I would have to note that like the FSM and the Marshall Islands compact, the Palau compact was negotiated within the framework of the Hilo principles. The Hilo principles were the understandings

that we reached in 1978 in Hilo, HI, and that was before this administration took office.

The Hilo principles were endorsed by this administration after a long, comprehensive policy review. We appreciated the time that this committee put in with the previous administration working that out.

We were able because of this conscientious effort to move on with these protracted negotiations.

In this area, that meant that there were literally thousands of individual items that we had to resolve; among them the nuclear claims damage. There were lawsuits there that alleged somewhere in excess of $5 billion in damages against the United States that were settled. The military land use on Kwajalein Island was another long and protracted issue that we had to face. And I am happy to report to you today, Mr. Chairman, that due to the really great efforts of High Commissioner McCoy, who spent 2 months in a trailer on Kwajalein, working that situation over, and to the really statesman-like conduct of President Kabua, in going out there and talking to his people as their leader—we have, as of last week, settled some very serious problems that we were having out there on Kwajalein.

Of course, we had to also address literally hundreds of issues regarding monetary considerations. I think some of this is still going on. Of course, the principal issue in Palau is the compatibility between the "Compact of Free Association" and Palau's Constitution.

I think that we have resolved that issue, and thanks to much of the assistance that we have received, particularly from your staff, working with the group, and I would like to acknowledge the contribution that Admiral Crowe made to that.

Admiral Crowe was in my office in the early 1970's, and he understood the problems of Palau and was very beneficial to us and wise and helpful in helping us come up with a very difficult answer to a very tough question.

Because of the importance of the manner in which the issues of compatibility between the compact and Palau's Constitution arose, I would like to just touch on it briefly here.

In 1980, the people of Palau adopted a constitution which contained a provision requiring 50 percent voter approval of any treaty delegating major powers to a foreign government, and a 75-percent voter approval of any such treaty authorizing the use, testing, storage, or disposal in Palau of certain types of weapons intended for the use in warfare, and this included nuclear, toxic, chemical, gases, or biological weapons.

At that time, the compact negotiations were proceeding on a multilateral basis. We were attempting to address the concerns of all three of our Governments at that time with respect to hazardous material related to our defense activities in section 314 of the compact.

That section contained a United States commitment to conduct its defense activities in a manner consistent with the nuclear test ban treaty, the London Convention on Ocean Dumping, and other international agreements and standards recognized by the United States.

As we have done in other areas of potential incompatibility, between the compact and Palau's Constitution, we also entered into a separate bilateral agreement with Palau which addressed the specific requirements of Palau's Constitution.

When the Palau compact was voted on a U.N.-observed plebiscite, back in February 1983, the compact was approved by 62 percent of the voters. An international referendum, a question on the same ballot for approval of a separate agreement on the weapons issue received a 53-percent majority vote approval.

Palau's court determined that the compact could not be regarded as approved in accordance with Palau's Constitution because of this referendum vote. Then in May 1984, the then-Ambassador Lazarus E. Salii and I signed a revised and simplified compact which eliminated section 314, dealing with the complicated weapons issue and simply requiring a 75-percent vote approval as a means of satisfying Palau's Constitution, and ensuring a broad United States defense authority and operating ability, which we, of course, require.

That compact received a 67-percent voter approval.

Then in October 1985, President Lazarus Salii and I met in Saipan to review the entire matter of approval of the compact for Palau. I went to Koror, the capital of Palau, and I met with the leaders of the National Conference. We dedicated ourselves to work in a new spirit of cooperation to see if we could finally resolve all these issues and complete the approval process in accordance with the people's mandate in the first plebiscite.

We made some revisions to the compact and we developed a new section 324, to deal with the matter of compatibility between the compact and the Constitution. In that section, the United States agreed not to use, test, store, or dispose of nuclear, toxic, chemical, gases, or biological weapons in Palau, and Palau agreed to respect our authority to operate nuclear-capable and nuclear-powered vessels and aircraft without confirming or denying the presence or the absence of such weapons in Palau.

Now this compromise approach was approved by 72 percent of the people at a U.N.-observed referendum on February 21 of this year. Because we have agreed not to engage in these activities which require a 75-percent vote, it is the view of the Government of Palau that 50 percent approval was sufficient to certify that the compact has been approved in accordance with section 411 of the compact.

Now, in keeping with Hilo principles, and the fundamental elements of the FSM and Marshall compact, the Palau compact provides a United States recognition of the constitutional Government of Palau to guarantee that they will enjoy internal self-government and sovereignty in foreign affairs while the United States will have full authority and responsibility for security and defense matters.

The Palau compact provides important United States military use and operating options and the Government of Palau agrees to refrain from actions incompatible with United States security interests.

Unlike the FSM and the Marshall compact, a political, economic, and military rights provision of the Palau compact extends for a period of 50 years, as opposed to the 15-year period.

I might add, Mr. Chairman, that I recall your input into that specific question and when we began negotiations to have the long-

term strategic defense rights, we were not sure we were going to get it and we are delighted that Palau and the others have recognized—the FSM and the Marshalls—the necessity of denying access by foreign military powers to these islands.

And I think that really provides the essence of our agreement for monetary consideration; I think that perhaps, when asked, what is the biggest single issue in the compact, I think that that very well could be considered as the major issue.

Now in all these areas, the compact contemplates a close government-to-government relationship here, based on mutual respect, consultation, and cooperation. I will be very happy, Mr. Chairman, to try to answer any specific questions you may have.

That concludes my brief statement.

[The prepared statement of Ambassador Zeder follows:]

STATEMENT OF AMBASSADOR FRED M. ZEDER II

THE PRESIDENT'S PERSONAL REPRESENTATIVE

FOR MICRONESIAN STATUS NEGOTIATIONS

BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

MAY 9, 1986

ON

THE COMPACT OF FREE ASSOCIATION WITH

PALAU

STATEMENT OF THE HONORABLE FRED M. ZEDER II

Ambassador and President Reagan's Personal Representative
for Negotiations on the Future Political Status
of the Trust Territory of the Pacific Islands

Mr. Chairman:

It is a pleasure to appear before you and the Committee today to discuss the Compact of Free Association between the United States and the Republic of Palau. Much of the history of the negotiations which produced the current Palau Compact was described in my testimony before this Committee on May 24, 1984, in connection with your review of the Compact of Free Association for the Federated States of Micronesia and the Marshall Islands. Based upon the record already before you, I will focus in my testimony today on the revised Compact with Palau and the developments in the negotiations which led to its signature on January 10 of this year.

Development of the Current Compact of Free Association with Palau

On August 26, 1982, then-Ambassador Lazarus Salii and I signed the original Compact of Free Association between Palau and the United States. At that time, the Compact was in the form of a multilateral agreement which also set forth the terms of a free association relationship with the Federated States of Micronesia and the Marshall Islands. Those two governments signed the Compact on October 1, 1982 and June 25, 1983, respectively.

The approval process set forth in the Compact was intended to satisfy the requirement under the Trusteeship Agreement that the

form of self-government established in conjunction with trusteeship termination be in accordance with the freely expressed wishes of the peoples concerned, and to comply with the constitutional and legal requirements of the signatory governments. Thus, Compact Section 411 required that the Compact take effect only after approval by the peoples concerned in valid acts of self-determination, and after approval by each of the governments concerned in accordance with their respective constitutional processes.

While the Compact approval process has been completed fully for the Federated States of Micronesia and the Marshall Islands, the question of compatibility between the Compact and Palau's constitution prolonged the approval process in Palau. I will review for you the various phases of Palau's approval procedure.

On February 10, 1983, in a United Nations-observed plebiscite, the people of Palau approved free association with the United States, as defined in the Compact, by a 62.1% majority of the voters. In a referendum question placed on the ballot, the people of Palau also voted on a separate issue relating to the security and defense provisions of the Compact. This referendum was intended to ensure compatibility between provisions in the Compact and those in Palau's constitution relating to the delegation of authority in defense matters. 52.3% of the votes cast in the referendum were affirmative. The Government of Palau, however, interpreted its constitution to require that this referendum question receive a 75% approval.

Because the 62% affirmative plebiscite vote on the Compact had satisfied the requirements of the Trusteeship Agreement and all

applicable international legal standards, both the United States and the United Nations Trusteeship Council, in the official report of its special Mission to observe the plebiscite, recognized the February 10, 1983 vote as a valid act of self-determination in which free association as defined in the Compact was approved. The inability of the Government of Palau to complete its constitutional approval process was later, on August 5, 1983, finally determined in a judicial ruling by Palau's Supreme Court. That ruling stated that the Compact could not take effect because the internal constitutional referendum question had not received at least a 75% approval.

Throughout the period following the plebiscite we asked President Remeliik and Ambassador Salii what measures might be taken to enable our governments to go forward with the political status process. It was at that time recognized that Palau's approval process would not be completed until after the Federated States of Micronesia and the Marshall Islands had resolved their approval process.

The Executive Branch, in consultation with Congress, determined that if approval by Palau was not imminent when the peoples and governments of the Federated States of Micronesia and the Marshall Islands certified to the United States that their respective approval processes were complete, we would recommend to the President that the Compact with those two governments be submitted to Congress. When those circumstances in fact came about, that recommendation was made and was accepted by the President, who submitted the Compact to Congress for its approval on March 30,

1984. Approval and implementation of the Compact for the Federated States of Micronesia and the Marshall Islands is provided for under U.S. Public Law 99-239, which was approved by the U.S. Congress on December 13, 1985 and signed by the President on January 14 of this year.

In conjunction with the decision to submit the Compact for the Federated States of Micronesia and the Marshall Islands without Palau, the Administration also determined that upon approval of that Compact the United States Government should seek an early termination of the Trusteeship Agreement with respect to those two governments and the Northern Mariana Islands -- whose freely chosen political status upon termination of the trusteeship will be that of a U.S. territory in accordance with U.S. Public Law 94-241. This represented a departure from a long-standing Administration preference that termination be effected simultaneously with respect to all of the political jurisdictions of the Trust Territory.

However, the Administration determined that with final approval of political status arrangements for the vast majority of Trust Territory inhabitants -- and with only Palau's future status undetermined -- further indefinite delay in bringing about termination would not be consistent with the Trusteeship Agreement, particularly in light of the long period that the people of the Northern Mariana Islands have been waiting to realize their aspirations for self-government. Further, as members of this Committee are aware, we believe that termination of the Trusteeship Agreement will advance related United States foreign policy objectives as well. It continues to be the policy, although not the preference,

of the Administration that partial termination of the trusteeship will be sought if we are unable to secure approval and implementation of the Palau Compact in a timely manner.

By the time the Compact for the Federated States of Micronesia and the Marshall Islands had been approved and submitted to Congress on March 30, 1984, the United States and Palau had been engaged for almost a full year in bilateral consultations aimed at achieving compatibility between the Compact approval process and the procedural requirements of Palau's constitution. As early as July of 1983, I met with Ambassador Salii in Guam to sort out the issues which had been raised in the aftermath of Palau's plebiscite. Given the clear mandate of the Palauan people in favor of free association, both the U.S. delegation and the Palauan representatives felt obligated to formulate solutions which would enable our governments to complete the approval process and implement the Compact.

One of the concerns that surfaced during our consultations with Palau's elected representatives was that, during the plebiscite campaign, outside interests had come into Palau and misrepresented the contents and meaning of the agreement to Palau's citizens. As just one revealing example, outsiders made much of a map attached as an annex to our military use and operating rights agreement. The map was marked and highlighted to show the areas within which the U.S. had an option in the future to select jungle warfare training sites for use on a short-term and non-exclusive basis. The people of Palau were told by non-Palauan Compact opponents that all of these areas marked out on the map, amounting to

one third of Palau's largest island, would be sequestered permanently by the U.S. for military bases. These same groups went into the villages and showed films of atmospheric nuclear tests during the 1940's and 1950's, and alleged that the U.S. would bring nuclear destruction upon Palau. Even with this propaganda and misrepresentation, both the Compact and the separate question on defense provisions were approved by majorities.

This experience, however, suggested that that the complexity of the agreement invited mischief by those who sought to distort the facts, and made the task of setting the record straight unduly difficult. It also was recognized that the original Compact had become very detailed and specific because the negotiations were conducted on a multilateral basis with the participation of large delegations from each of the Micronesian island group and later their governments over a period of fourteen years. For these reasons, during the negotiations which took place during 1984 an effort was made to simplify and shorten the Compact and the separate agreements.

The revised version of the Compact which resulted from these efforts was signed on May 23, 1984. The fundamental elements of free association as defined in the original Compact had been preserved, but, since the terms of the agreement were now necessarily bilateral between the U.S. and Palau, they could be expressed in a more direct form.

On the premise that the political status and relationship of free association defined in the Compact had been approved in the February 10, 1983 plebiscite, the Government of Palau presented the

revised Compact to the Palauan electorate in a referendum intended to satisfy Palau's constitutional requirement for a 75% approval of the agreement in its form at the time. In that September 4, 1984 vote, the revised Compact received a 67% affirmative vote. Despite this two-to-one majority, however, by the very terms of the Compact and the ballot language, this margin was not sufficient to enable the Government of Palau to complete its constitutional approval process.

During the period following the September 4, 1984 referendum, both sides rededicated themselves to continued efforts to implement the mandate of the February 10, 1983 plebiscite. Subsequently, on June 30, 1985, Palau President Haruo Remeliik, who had been a steadfast supporter of the Compact and who had committed his Administration to its approval, was murdered.

In the aftermath of President Remeliik's death, most observers speculated that no further progress would be made on Palau's political status in the foreseeable future. However, during a meeting with Vice President Bush in Saipan on October 13, 1985, the newly-elected President of Palau, former Ambassador and chief political status negotiator Lazarus Salii, joined by the leadership of the Palau National Congress, expressed a desire to go forward with the political status process. Shortly thereafter, I attended President Salii's inauguration and resumed consultations on the political status issue with the Palauan leadership.

In the days and weeks that followed we addressed ourselves with increased intensity to the issues which the new President and the National Congress felt had prevented approval of the Compact.

President Salii encouraged direct and active participation in the discussions by Palau's Congressional leaders, and together we formulated proposals intended to resolve outstanding issues. On the basis of the unified approach taken by the Palauan leadership during this process, President Salii and I initialed a revised Compact in Washington D.C. just before Christmas. We also agreed at that time, with the support and encouragement of the Palau National Congress, traditional leaders and most of Palau's elected leaders, to sign the revised Compact in Palau on January 10, 1986.

On February 21, 1986, a plebiscite on the Compact was conducted in Palau with United Nations observation. The Compact received an affirmative vote by 72.2% in polling that drew a heavy voter turnout. On February 24, President Salii certified to our Government the results of the vote and his affirmation that the Compact approval process for Palau has been completed in accordance with Palau's Constitution. The implications of that vote can be understood best in the context of the following discussion comparing the current Compact with previous versions.

Comparison of Current and Original Palau Compact

The Compact of Free Association signed on January 10 was revised in two very significant ways. First, Title V, Section 502 of P.L. 99-239 provides that Palau's Compact will be subject to the same modifications as those made to the Compact for the Federated States of Micronesia and Marshall Islands in the trade and tax areas. In order to implement this provision, Palau agreed to re-

vise the Compact to incorporate the trade and tax changes set forth in Title IV of P.L. 99-239, including associated compensation provisions.

The other major difference between the current Compact and the previous two documents is contained in Section 324. This provision is intended to ensure compatibility between the Compact and Palau's constitution. Specifically, Compact Section 324 links the operational aspects of United States authority for security and defense matters with the language of Article II, Section 3 of Palau's constitution relating to the required approval margin for the Compact. It had been those constitutional provisions on approval of international agreements which had operated in the past to require 75% approval of the Compact.

In Section 324 of the current Compact, the United States has agreed that in the exercise of its authority under Title Three of the Compact, it will not engage in those specific actions which, under Article II, Section 3 of the Constitution, require 75% approval before the Government of Palau could certify completion of its approval process. While United States agreement to accept those specific limitations served to achieve the necessary compatibility, it was recognized by both sides that the United States could not accept restrictions which would impair the ability of the U.S. to carry out fully our defense role under the Compact. Thus, Palau agreed in the same Compact Section 324 to recognize our ability to operate nuclear-powered or nuclear-capable vessels and aircraft in Palau without confirming or denying the presence or absence of nuclear or other types of weapons.

In this manner, Section 324 satisfies both Palau's constitution and United States operational needs and eliminates what both sides regard as the source of a potential incompatibility between the two documents. The effort to develop a formula for resolving the compatibility problem began after the February 10, 1983 plebiscite. From that period until very recently, it had been thought that a separate treaty interpreting the Compact and the constitution would be the best vehicle for resolving the issue. In the very final stages of the negotiations, however, the idea of a separate treaty was put aside in favor of incorporating the issue in the Compact itself.

Because of the agreement reached in Compact Section 324, we also agreed to revise the provisions of Section 411 relating to the required approval process for the Compact. Since the February 10, 1983 plebiscite still has international legal standing as an act of self-determination, and Compact Section 324 removed the procedural requirement under Article II, Section 3 of Palau's constitution for a 75% approval, it was agreed that the approval process called for in Section 411 would be described simply as a referendum. The principle underlying this approach is that interpretation of Palau's Constitution -- particularly as to its internal process for approving the Compact -- is exclusively a matter for Palau to determine.

There are several other provisions of the current Compact which differ from those of the May 23, 1984 Compact and which are based on the language of the Compact signed on August 26, 1982. I have attached a summary of these changes and would be pleased to

answer any questions you may have. The only general comment I will make is that throughout the entire negotiating process we have never deviated from the fundamentals of free association as defined in the Hilo Principles and articulated in my earlier testimony before this Committee.

We are grateful to you, Mr. Chairman, and the members of this Committee for the important role you played in developing the language of P.L. 99-239 that foreshadows expeditious consideration of the Palau Compact by Congress.

United Nations Trusteeship Termination Procedures and Schedule

This Administration, like its three predecessors, believes it to be in the national interest of the United States to bring about termination of the Trusteeship Agreement at the earliest date consistent with the implementation of the acts of self-determination that have taken place throughout the Trust Territory. We thus intend to commence and conclude the process of termination of the Trusteeship Agreement by mid-summer. A number of urgent problems, not the least of which is retention of peaceful access to the Kwajalein Missile Range, call for urgent efforts to end the Trusteeship and bring the Compact fully into force.

On the assumption that Congress will enact the Palau Compact joint resolution at an early date, we intend to approach the United Nations, starting with the Trusteeship Council, in May during its regularly scheduled meeting, with respect to termination. We will seek from the Council a conclusion that the peoples of the Trust

Territory have, in legitimate acts of self-determination, freely chosen their future political status and that United States obligations under the Trusteeship Agreement have been fulfilled. We expect the Northern Mariana Islands, and the other Pacific Island states will support this position.

After action by the Trusteeship Council is complete, the United States intends to take up the question of Trusteeship termination with the Security Council of the United Nations. Our goal here will be to achieve a degree of support for Trusteeship termination that will assure international recognition of the sovereignty of the future freely associated states and will recognize the Northern Mariana Islands as a Commonwealth of the United States. Equally important in the Security Council is our goal of preventing any nation, or bloc of nations, from disrupting the termination of the Trusteeship Agreement and denying the peoples of the Trust Territory their freely chosen political status desires.

There is no precise procedure set forth in the Trusteeship Agreement, nor is there any precedent, for termination of a strategic trust. Of the eleven trusteeships created after World War II this is the only one with "strategic" implications. Therefore we will assume the prerogative of adopting a procedure which is consistent with accepted international practice and best suited to the accomplishment of our objectives as stated above.

Fiscal Implications of Palau Compact Approval

To update the Committee on budgetary implications of the revised Palau Compact, Palau will receive an average amount of approximately $20 million annually for current account purposes, or primarily for the financing of government operations. For economic development or the capital account, the Compact provides for a one-time grant of $36 million to be provided in the first year of the free association relationship and for an undertaking by the United States to construct a road on Babelthuap, Palau's largest island. This latter project will be conducted by the United States and will be contracted. Because most of the provisions of Palau's Compact run for fifty years, an investment fund of $70 million will be provided, with $66 million to be made available in year one followed by $4 million in year three, for the purpose of capital growth through investment during the first fifteen years so as to allow annual disbursements during the last thirty-five years of the funding period. Thus, Palauan receipts will not match U.S. outlays during most years of the effectiveness of the Compact. Finally, like the Marshall Islands and the Federated States of Micronesia, Palau will receive certain services from the U.S. Weather Service, Postal Service, FAA and Department of Transportation.

Over the initial fifteen year period of Palau's fifty year Compact, United States outlays are estimated at $420 million. The first year amount is $141 million and is significantly larger than any subsequent year due to the inclusion of the one time $66 mil-

lion investment fund and $36 million capital account funding. The second year estimate of Compact funding for Palau, now projected to cover the FY 1987 cycle, is $31 million. Since the first year of the Compact involves the outlay of the special, one-time grants that I have noted, the Compact will constitute, in its first year, a significant increase over the amount the U.S. would have spent had the Trusteeship continued for that same year. In subsequent years, the U.S. outlays for the Compact more nearly approximate the total U.S. fiscal exposure for Palau were the Trusteeship to continue. If one considers only the first fifteen years of the free association relationship, which in the case of Palau is the period during which U.S. assistance will be provided in the form of annually appropriated dollars, the Compact, on the basis of estimated costs attributable to that period, will result in a savings of approximately $85 million.

Enactment of the Palau Compact by Congress will constitute a multi-year authorization for the appropriation of the funds specified in the Compact itself. As in the case of the Compact for the Federated States of Micronesia and the Marshall Islands, the Administration will request the appropriation of Compact funds for Palau after Congress has enacted the Compact authorizing legislation. Were Congress to refuse to appropriate the funds necessary to finance the first year of Compact assistance, the Administration would be unable to bring the Compact into effect for Palau. Were Congress to refuse to provide the requisite funding in a later year, the Government of Palau could seek relief in the United States Claims Court with respect to funding covered by the full

faith and credit pledge set forth in Compact Section 235 or in the Compact arbitration mechanism with respect to funds not so pledged.

Congressional enactment of Palau Compact implementing legislation

The President's proposal to Congress with respect to the Palau Compact included a draft joint resolution that contains, essentially, the text of the Palau Compact. I should note that, the provisions of Title IV of the FSM and Marshall's Compact having to do with adjustments to the tax and trade provisions, and the compensatory adjustments related to those provisions, have been included in the text of the Palau Compact.

Conclusion

Mr. Chairman, I appreciate this Committee's understanding of the importance of termination of the Trusteeship Agreement and the need for expeditious consideration and approval of the Palau Compact.

We in the Administration are grateful for your invaluable and steadfast cooperation in the past. We look forward to working with you now to conclude the last episode of this process, and to this Committee's continuing interest and involvement in the new relationship with Palau, as well as with the Marshall Islands and the Federated States of Micronesia.

The CHAIRMAN. Madam Secretary, you do not have a statement at this time, or do you?

Ms. BAIER. No, sir. I do not have a formal statement. I would like to join with Ambassador Zeder in thanking you and the other members of the committee for taking prompt action on the Palau compact. And I would also like to commend President Salii on his long-term efforts, both as negotiator, and now as the President of Palau, in his efforts on behalf of the compact.

I will be happy to answer any questions.

The CHAIRMAN. Thank you very much. Mr. Ambassador, I appreciate your reference, particularly to the security issue, because I believe there is a place where we have absolute conjunction of viewpoint between the administration and the Congress and between our Government and the Government of Palau.

My concern, and I come from the generation when "The War" is World War II, and I remember far too well the difficulty that we had as a nation in protecting our own security as we fought through the islands toward the termination of World War II. I am certain the people of Palau do not need to be reminded of the sacrifices and the tremendous damage done to their islands and the destruction to their people as a result of a conflict to which they were not a party.

I think they are just as determined that they are not going to be hostage to that again as we are to make certain that we never have to do it again.

I think there is an absolute agreement, a meeting of the minds and determination to make sure that does not happen on their territory again.

I imagine most Americans would have to be reminded of the "Battle of Bloody Nose Ridge," as an example. But I do not think the people of Palau have to be reminded that that was in their territory.

So, I think the determination on both sides is equal. The method by which it is accomplished in the field of complex relationships is a little more difficult to state.

I appreciate the efforts made on both sides to find that solution which we can with confidence go before the United Nations and say we have found the solution that will protect their interests, will protect the security of the United States, and will guarantee, as far as words can guarantee, a security for the region.

Mr. Ambassador, you have made reference, of course, to the troubling and complex question of the constitutional provision with respect to certain weapons and materiels and the way in which that constitutional provision is reconciled with the compact provision and have stated what you believe to be a solution.

Could you please comment on the practical effects if the Palau court should decide differently, from your conclusion and reinterpret the section of the Palau compact in such a fashion as to be in conflict with the Palau Constitution? How would the United States operations then be affected?

Ambassador ZEDER. Mr. Chairman, if I may, I have with me today Mr. Berg and Mr. Hills. What I try to do in my own shop is when we come to a very sensitive legal question, I refer to Lieuten-

ant Hills' judgment; in political, legal, and financial, I refer to Mr. Berg.

They are both hesitant to come forward, but if I ask them they might, and I would like to invite them, if I may, to come here.

The CHAIRMAN. Of course, and if it needs my invitation, I will add it.

If you gentlemen, for the record, would recite your name and the office you hold so that the record will be complete.

Mr. BERG. My name is James Berg, with the Office for Micronesian Status Negotiations.

Mr. HILLS. My name is Howard Hills, sir; legal advisor in OMSN.

The CHAIRMAN. You gentlemen, I assume, heard the question.

Mr. BERG. We did, Senator. I think the question has to do with an extreme situation where the compact has entered into force, a court case has occurred in Palau and judgment—a nonappealable judgment—was delivered by the Palau courts that presumably went to the question of adequacy or, in the case you posit, inadequacy of the approval procedures.

In other words, that a 75-percent approval majority would have been required, and thus, the Government of Palau would be under a court order in some manner to not allow the United States to operate with the same degree of military rights that we believe we have achieved in the terms of the compact. In that circumstance, which is of course a hypothetical one, we believe that the United States would have one of three possible reactions to take. One would be to simply accept the situation and agree to a reduction in our operating rights. Another would be to continue business as usual, if you will, on the basis of the fact that when we entered into the "Compact of Free Association" with Palau, when the executive branch received Palau's certification, sent it to Congress and when Congress approved it, we were put on notice by the Government of Palau that Palau had, in the judgment of its Government, approved the compact in compliance with the Constitution.

That was our going-in good faith assumption and as a result of that we would be in a position to continue to exercise our rights as they were set forth in the compact.

The third possible scenario that could occur would be that the Government of Palau would tell us that we can't do whatever the particular action might be. The United States would then be in a position to say that Palau was engaging in a material breach of the compact; by not allowing the United States to carry out its rights, Palau was not living up to its obligations under the compact.

In a circumstance of material breach that occurs in the context of an international agreement or treaty, which, of course, the compact is, the United States could avail itself of the normal remedies under international law which are, in effect, the selective withholding of its own obligations under the agreement. In this case, that could include but would not be limited to the financial assistance that we provide to Palau.

Now, this is a hypothetical situation, I do not think there is any real percentage in terms of figuring out which one of those three options the United States might want to do at the time. I think that would be determined primarily on the basis of the consultations we would have with Palau, because I am sure the Palau Gov-

ernment would bring this to us and would seek government-to-government consultation.

The CHAIRMAN. Let me ask a couple of questions in that regard. First of all, I suppose there is also a fourth option, as you have outlined, and that is to go back to them with a specific proposal and ask them just to agree to it by plebiscite.

Mr. BERG. Yes; we could. I subsumed that in the first one, but that is certainly a specific action which one could also take.

The CHAIRMAN. And a question with respect to the third option; my understanding is that the financial obligations are to be prefunded. If they are prefunded for the years 16 through 50, how do you get the money back?

Mr. BERG. The financial obligations of the Palau compact are in fact prefunded in the sense that a trust fund is provided in bulk in year 1, with a small remainder in year 3. However, during the period of that trust fund's existence—in other words, during the 50-year period—that fund is provided to Palau explicitly, both in the compact and in the section 211(f) agreement, as an obligation by the United States in exchange for, one would assume, the obligations that Palau undertakes.

The section 211(f) agreement specifically says that only after the expiration of that period is Palau's ownership of that fund without condition. So in other words——

The CHAIRMAN. After the expiration——

Mr. BERG. Of the 50-year period. So in other words, conditions inhere to Palau's ownership and use of that fund and they are, in the broadest terms, the continued good faith functioning of the "Compact of Free Association."

The matter of precisely how the United States might reacquire the funds or whether we would even want to, obviously would have to be developed at the time.

The CHAIRMAN. In your first option, which would be simply to recognize or to accept—perhaps is a better way—to accept the limitations that might be imposed by that kind of a decision and reduce our operating practice and right form of that condition, we have an obligation under the compact to provide security for the area. Maybe I should wait and address the question to the admiral later, but how do you propose we provide security if we cannot operate our Navy?

Mr. BERG. Well, sir, I do not propose that we follow option 1, but you are correct; if we were to follow option 1, there would need to be some degree of adjustment in the level of defense responsibility and obligations that the United States has.

We believe that we have established in the compact with Palau a workable link between the degree of our authority and the degree of our responsibility, and of course, if one is altered, the other one would, of needs, be increased or reduced proportionately.

So that is correct.

The CHAIRMAN. Let me shift for a moment to the question of funding. Last week in a hearing before the Appropriations Subcommittee on Interior and Related Agencies, Assistant Secretary Montoya stated that the administration would have no objection to funding for the Palau compact on the fiscal year 1986 supplemental.

This approach could, and I emphasize could provide funding for all Micronesian compacts by July. However, I understand that the administration will request termination of the trusteeship from the United Nations' Trusteeship Council next week and the Security Council in July. Is that correct?

Ambassador ZEDER. That is correct, sir.

The CHAIRMAN. Is the administration planning to request funding for the Palau compact in advance of enactment?

Ambassador ZEDER. Yes, sir. First, we are meeting with the Trusteeship Council next week. We are planning to meet with the Security Council sometime in July, so there is a lead period. There is going to be a short period before we will actually terminate the trusteeship.

The CHAIRMAN. We will be working on the supplemental starting next week; not in July. So we are going to have to make some decisions before you get around to that kind of—we do not have a very neat and easy sequencing of events here.

Will the lack of enacted appropriations or of an enacted Palau compact be factors considered by the administration for possible delay in the request for termination?

Ambassador ZEDER. No, sir.

The CHAIRMAN. How likely is it that the United States will wish to delay termination pending enactment of the Palau compact and the appropriation of funds?

Ambassador ZEDER. In our meetings next week with the Trusteeship Council, we feel comfortable with the situation as it is. With the Security Council, we are very anxious to have action taken on the Palau compact so that we can seek trusteeship termination for the entire area. I think it would be a very awkward situation if we would not be able to put this package together. It would be particularly difficult for our friends in the Northern Marianas, too.

The CHAIRMAN. Well, it seems to me that in order to maximize the likelihood that there will be no problems at the United Nations, that the administration would like to have both the compact and the funding in place.

Ambassador ZEDER. That is right, sir.

The CHAIRMAN. And in fact, if you really feel that way, if the administration really does feel that way, I would suggest you ought to ask us to put money in the supplemental.

Ambassador ZEDER. Thank you, sir. I will make such a request.

The CHAIRMAN. Would you provide the chairmen of both the Senate and the House Appropriations Committees, as well as this committee and the relevant House-authorizing committees, with letters from both the Department of the Interior, and OMB, confirming Assistant Secretary Montoya's statement, in stating whether the administration supports and desires an appropriation in fiscal year 1986 for Palau, concurrent with the request for the Federated States of Micronesia and the Republic of the Marshall Islands?

Ambassador ZEDER. Yes, sir.

The CHAIRMAN. It is my understanding that Palau's compact funding will total $417.5 million over 15 years. How much would the United States spend in Palau over those 15 years if the compact were not enacted?

Ambassador ZEDER. Mr. Chairman, it is really somewhat difficult to make long-range forecasts. We have taken a stab at it. I would not want to be held to these numbers, personally, but we feel that if the trusteeship were to continue over the next 15-year period, that the $400-plus million that we anticipate now to be the cost of the compact to the United States for Palau, would probably be increased somewhere in the neighborhood between $35 and $85 million.

Now the difficulty in making such a projection is that we do not know what Federal programs the Congress of the United States may or may not wish to include. We also have made this projection on a straight line, using a very modest, in my judgment, inflation factor for overhead in running the trusteeship.

If the performance of the last 10 years is repeated in the next 10 years, there is a gigantic increase in the cost of that operation. We did run figures back 10 years ago and we were amazed at how expensive that operation has become in the last few years.

The CHAIRMAN. Did your estimate of future costs include the proportional costs of the Trust Territory headquarters?

Ambassador ZEDER. Yes, it did.

The CHAIRMAN. Would you provide for the record a somewhat more detailed estimate of what those figures might be?

Ambassador ZEDER. Yes, sir.

The CHAIRMAN. Agencies have not yet been notified of their responsibilities under the compact to continue their services, grant eligibility and/or technical assistance. Until they are notified, there will continue to be confusion regarding these services in the Congress and in Micronesia.

When will all Federal Agencies be notified of their responsibilities under these compacts?

Ambassador ZEDER. Mr. Chairman, we know how important it is to get this information out and we have been working diligently on trying to put it together. It is my understanding that the process is one in which all the agencies that have been involved—some 28 different departments and agencies—have all been notified and are reviewing the current drafting their version of the draft Executive order.

This, I understand, has to pass through OMB and I have tried to find out from them on a number of occasions when we are going to get the final copy.

The CHAIRMAN. So have I.

Ambassador ZEDER. We both have. Let me assure you, Mr. Chairman, that the moment that we do have something that we feel is definitive and represents the views of all involved agencies and departments, you will be the first to get it. We will give it to you immediately. That is the day that these other agencies or these other Federal departments will be officially advised.

I must say that, again, congratulatious are due to the High Commissioner for the way she has anticipated this and has begun taking very useful steps in cutting her operations down.

The CHAIRMAN. Mr. Ambassador, the committee has received indications that Federal agencies have been informed, or are under the impression that they do not have to provide either program grant or technical assistance unless they are either reimbursed by

the Office of Territories or are specifically instructed to do so in the Appropriations Act.

Is that correct?

Ambassador ZEDER. Mr. Chairman, neither I nor Mr. Berg, who is the source of all knowledge on this subject, are aware of that.

The CHAIRMAN. I cannot understand where they would get that notion, but apparently it is rather widespread.

Mr. BERG. The only thing I can say about it, Mr. Chairman, is that it be more in the nature of confusion rather than in the nature of direction on the part of some of these agencies.

The CHAIRMAN. Well, it may be because some of them looked at the President's budget request. I note, for example, that the President's proposed fiscal year 1987 budget indicates that, again, an effort has been made in the labor, health and human services appropriations to eliminate assistance. If it is our intention to maintain it, why is that expressed in the budget that way?

Mr. BERG. I know what you are referring to. You are referring to the 1987 appropriations language and we will provide an answer for you.

The CHAIRMAN. The fiscal year 1987 budget request does not conform either to current responsibility or responsibility under the proposed compact. If there is confusion, it may well be that we have created it—we, the administration; we, the Government, by speaking with two voices, or speaking in opposite direction, or speaking ambiguously.

Ms. BAIER. Mr. Chairman, if I may comment, I believe that the language in the 1987 budget was put there on the assumption that there would be compact funding available. Our office, the Office of Territorial and International Affairs, has been meeting informally with representatives from a number of the other Federal agencies, encouraging them to continue their programs until there is compact funding, if they are able to do so.

The CHAIRMAN. I can see, as I seek enlightenment, I only get more confused. Because the compact does not eliminate all funding through the agencies. The budget suggests that it does. Your answer suggests that it does. Not all funding postcompact will flow through the compact. Is that correct?

Ms. BAIER. Yes, it is.

The CHAIRMAN. Then your answer is inaccurate.

Ms. BAIER. In these informal meetings that we have been holding, we have tried to express to those agencies that will have continued authority that such authority indeed will be there.

The CHAIRMAN. You are telling them that, but you did not tell the Congress that. Is that what you are saying?

Ms. BAIER. Well, oftentimes that authority is something that will not change. It is an eligibility for programs.

The CHAIRMAN. The eligibility of the programs will change, but there is a funding level required in the agencies either with or without the compact. That funding level may change, but we are confronted not with a request for either level, but an elimination totally, and the explanation is, well that will come through the compact, when, as a matter of fact, it does not come through the compact in every instance.

Ms. BAIER. I agree that there is some confusion.

The CHAIRMAN. And we have no request for funding in the compact, either. That may be corrected, at least, in part, if we get a request from the administration for funding of the compact in the supplemental, but it is not going to help us with respect to the 1987 funding level in the agencies where they will have remaining obligations for expenditures and no budget request.

And now we are faced with the very difficult situation of a fiscal year 1987 budget request to which we will be asked to add later—and I assume the administration is aware of the fact that under the deficit control laws, laws that control our processes here now, every addition has to be met with an offset, at least in the Senate. The House has not yet come to that point of view.

But if we are going to add money later for obligations which we know now that we have, what are you going to subtract?

Mr. BERG. Mr. Chairman, I think part of the confusion—and part of the problem that may in fact result due to the fiscal year 1987 HHS, Labor and Education appropriation language that you referred to earlier—which I might note is linked with the language of Public Law 99-178 insofar as it relates to fiscal year 1986, for those three same departments—has to do with the fact that when the President's budget request was being put together in the December-January period for transmission to Congress in the very beginning of February, that was precisely the time that Congress was finally enacting the compact and the President was signing it. There was, I think, at that time on the part, at least, of the administration, not a small degree of confusion in the sense of whether Congress was requiring, at least by one reading, that all of the compact funding to be appropriated through a single agency.

For example, the language of section 105(b) of Public Law 99-239 still does create some problems for the administration in terms of the ability of the Interior Department, for example, to do some necessary reimbursements to the Department of the Army.

I do not believe, as was brought out in your appropriations subcommittee hearing the other day, that the language needs to be interpreted in a way requiring all funding for the Freely Associated States to go through the Department of the Interior.

But I think that when the President's budget was put together, it was based on a unified budget approach which would then require the estoppel of other agency funding for the Freely Associated States. That approach was thought either to be a requirement by Congress or a prudent administration management measure.

So, as we get into the process of implementing the Compact of Free Association——

The CHAIRMAN. Can I interrupt at this moment, because I want to make sure that I understand—yes, indeed, there has been a great deal of discussion about postcompact administration. We have been slow in arriving at a composite agreement in that regard. That may have confused some of the other terminology, but postcompact administration is centered in the Department of the Interior. The administration of the funds of the program is not the same thing as saying there will be a single appropriation.

Do you understand the postcompact administration to require a single appropriation through the Department of the Interior?

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Mr. BERG. I think we understand it to require a single appropriation to the Department of the Interior insofar as the funds that are specified in the compact, itself, and the funds that will support the Federal programs that themselves are named in the compact, particularly in compact section 221(a). Those by the way, are the Federal Emergency Management Administration, the Postal Service, et cetera; the programs that are actually specified in the compact.

I believe it is necessary to read section 105(b) in that way because that those are programs that are in the compact and section 105(b) makes specific reference to funds appropriated pursuant to the compact.

Section 105(b) of Public Law 99-239 is also very specific with respect to funds appropriated "pursuant to this Act." Now, that could be taken to mean the other Federal programs that are authorized or for which Micronesian eligibility is created by Public Law 99-239. But as I understand the position of your committee, it is that other Federal programs can operate or be funded directly and what Congress intended was that their operations would be coordinated and monitored by the Interior Department, but that their funding would not flow through the Interior budget.

But, as I said earlier, Mr. Chairman, I think that confusion on precisely this point with respect to congressional intent and how to go about dealing with section 105(b) is what resulted in the approach taken in the President's budget with respect particularly to health and human services, education and labor.

Ms. BAIER. Mr. Chairman, if I may comment further, with regard to some of the add-ons to the compact; we have been requested to provide a Solicitor's Opinion on whether or not these add-ons are indeed entitlements or authorizations. This very question that we are discussing here is also addressed, or will also be addressed in that Solicitor's opinion as to whether or not all the funding has to go through Interior, or if indeed, other Federal agencies have the authority to provide their own funding to the Freely Associated States.

Mr. BERG. Mr. Chairman, there is a particular Federal program that we are all discussing right now that provides a very good example, and that is the Peace Corps. We certainly expect, and I think the Freely Associated States expect, that the Peace Corps will continue to operate in the Freely Associated States. Yet, in no place in Public Law 99-239 is the Peace Corps referred to or authorized.

The Peace Corps has its own authorization legislation and it receives its own operating budget and its own appropriation act. So it would not be an agency that would have to receive funding from the Interior Department for its annual activities in the Freely Associates States.

The Peace Corps would look to its own appropriation act and the level of its activity in the Freely Associated States would be coordinated with the Department of the Interior, but would primarily be established in terms of agreements between the Peace Corps and the Freely Associated States themselves.

I think that is the model that you are probably talking about.

The CHAIRMAN. Well, there are a number of different models, some of which require specific funding levels which are provided

for. I think that was, under section 105, be requested by DOI and they would reimburse the agencies, would they not? There are others in which there is eligibility established by the compact for the benefits of programs run by other agencies. Postcompact administration will require that the Department of the Interior be the responsible agency with respect to the administration of those programs. It would be my understanding that the agency, itself, would make the budget request; not the Department of the Interior.

Mr. BERG. Yes. That is our understanding. I think the language of section 105 contemplates Interior's role as one of coordination and monitoring of the programs.

The CHAIRMAN. I think that is correct, so that we have a single point to which they look for the coordination.

Mr. BERG. That is correct, but, for example, a program does not cease to be an HHS program and become an Interior program as a result of that.

The CHAIRMAN. From the standpoint of the budget request and funding.

Mr. BERG. Precisely. Ms. Baier indicated that the Interior Department Solicitor will be providing an opinion with respect to whether or not the programs listed in section 105 of P.L. 99-239 are entitlements, so-called, or authorizations. But on the assumption that they are authorizations, there is one relating, for example, to education programs. It provides that education programs will continue for a 3-year period but it provides ceiling levels that are authorized. So were funds to be appropriated for that purpose, presumably they would be appropriated to the Interior Department for reimbursement to the Education Department.

The CHAIRMAN. I do not agree with that statement. I think where there is a specific thing like Pell Grants, as an example, that would be appropriated to the Department of Interior and reimbursed to the program, if necessary, because that is a different category than the education programs, generally speaking, which are appropriated through Department of Education and administered through Department of Interior for coordination in postcompact administration.

Ms. BAIER. But the language of the compact legislation is confusing in that it does say that all funds will be appropriated to the Department of the Interior.

Mr. BERG. Or funds appropriated pursuant to this act, and those amounts—I think it is $13 million in the first year, and $8.7 million in the second year, are in fact set forth in P.L. 99-239. So, I think it is quite logical, with respect, Senator, to conclude that these funds would go to the Interior Department for reimbursement to Education.

The CHAIRMAN. If you will look at the wording of the compact, and I would refer to 105(h)(2) as an example, which is Federal education programs, we are talking in this instance about programs, not specific cash grants. And the program, although 105(h)(2)(a) has a dollar limitation, that is not a specific cash grant. It is a program. My understanding of the meaning of the compact and the way in which it would be administered in postcompact administration is that the program would be appropriated to DOE, even

though the funds might be subject postcompact administration and coordination through DOI. But, DOE would make the request and the appropriation would be to DOE, as distinguished from specific cash amounts which would be requested by DOI and appropriated to DOI.

Now, maybe that is an area where we need—rather than try to settle it here today in the hearing, we try to work out between ourselves—obviously our concerns are not totally dissimilar, not totally antagonistic; it is just a matter of trying to understand how the compact provisions with respect to programs and with respect to specific cash grants are to be appropriated so that we make sure that in our appropriations process we appropriate correctly, and so that it does not interfere with what we understand to be the evolving administrative determination with respect to postcompact administration.

I would look forward to working with you in that regard as we try to work out some of these rather complex and what some might believe to be arcane questions. But they are very important, both in terms of my own perception of postcompact administration, but very important from the standpoint of how we do it so that we make sure that we do not have some of them falling between the cracks.

Ambassador ZEDER. I agree with you completely, Mr. Chairman, and we will certainly cooperate with you every way we can, and with Interior, to provide you with specific information.

The CHAIRMAN. This has a long history and it is not an untroubled history, but it needs to be straightened out and understood.

I want to thank you very much for your testimony today. We have a number of other questions which we will submit for response in writing for the record.

I particularly appreciate your assurances that we will get letters from the administration with respect to the appropriations for fiscal year 1986. I believe for a variety of reasons, yours and mine, that it is desirable for us to get as much of that funding in place as is possible to do at the earliest possible time.

I think it helps you in your presentations to the United Nations; it certainly helps us in our presentations to our friends in Palau, to know that we are implementing by the dollars that we have promised specific, concrete action, not just promises. For a variety of reasons it is also helpful to us in the budgetary process up here to get it done as quickly as we possibly can.

Ambassador ZEDER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, very much, once again, for your appearance and for working with us over the long period of time on some rather difficult issues. Thank you.

Ambassador ZEDER. Thank you.

The CHAIRMAN. We would like to now welcome His Excellency Lazarus Salii, President of Palau, no stranger to this committee, nor to Washington, but again, welcomed here.

Mr. President, again, I express my welcome, but also to suggest that your entire written statement will be placed in the record in full, together with the attachments to it. I would invite you in the interest of time to summarize as briefly as you can and then we can proceed to questions.

STATEMENT OF HON. LAZARUS E. SALII, PRESIDENT, REPUBLIC OF PALAU, ACCOMPANIED BY SENATOR TOMMY E. REMENGESAN, JR., PALAU LEGISLATURE

President SALII. Yes, Mr. Chairman. I will summarize my testimony before the committee this morning.

Before I do that, I would like to thank you for clarifying the situation with respect to the thinking of the Administration on the supplemental for the Republic of Palau. And as that issue relates to the termination question, it is our intent to report to the United Nations next week and to ask that Palau be included, along with the rest of the Trust Territories in the issue of termination. It will help our cause if, indeed, we can inform the United Nations that the United States Congress is in the process of coming up with a supplemental appropriation which will also include the Republic of Palau. I appreciate your efforts in that regard.

The Chairman. Surely.

President SALII. I would like to introduce Senator Tommy Remengesan, sitting on my left.

It is indeed an honor, Mr. Chairman, for me to appear before you today on behalf of the people of Palau to testify on the Compact of Free Association between the United States and the Republic of Palau. I also bring to you and the members of the committee the sincere and best wishes of the people of Palau for you, as you begin what I hope will be the last of the hearings on the compact between your Government and our people.

I have expressed the appreciation of the people of Palau to the other committee chairmen who have held hearings on this particular compact and I would like to thank you for scheduling this hearing so soon after the receipt of the compact by the committee, from the administration.

My message to you today is very clear and very simple: My people want an expeditious end to the trusteeship system. They respectfully ask the U.S. Congress to promptly approve the compact and thus make possible, at long last, what they have sought to achieve for so many years.

The people of Palau are proud and happy that after nearly 20 years of difficult negotiations and three separate plebiscites, we were able, by an overwhelming 72 percent majority, to approve free association between American and Palau.

Following that approval, our people have a strong desire to see the immediate termination of the Trusteeship Agreement which has governed our lives for the past two decades. 40 years is a long time for any one person to be held under a quasi-colonial status. It is our hope, therefore, that the Congress will take prompt action to approve the compact and enable Palau to join the other new governments in Micronesia in addressing the termination issue before the United Nations this month.

The compact restores the sovereignty to our people after 400 years of foreign domination. It recognizes our ownership of our land; it recognizes our dignity as a people, and it provides ample means with which to improve the standard of living of our people.

It also provides for continued association and friendship between Palau and the United States. This unique political relationship is

valuable to Palau because in the past 40 years we have come to respect and to admire your great Nation and the principles of individual freedom and democracy for which it stands.

As we stated at the beginning of the negotiations with your Government, whatever evaluation we may make of the American Administration in Palau, "We feel that one contribution has been indelible, one achievement almost unqualified." And that is the respect for constitutional government, respect for the principles of individual freedom that your country has instilled permanently in the heart and minds of our people.

We now have in Palau a firmly established constitutional government and that government is fully capable of carrying out its responsibilities under the compact, and it is equipped to meet any challenges, and promises inherent in this document.

As you are fully aware, Mr. Chairman, the compact is not a perfect document, not from the point of view of the United States; not from ours. We have had people, not citizens of Palau, who have appeared in various hearings in Congress and before the United Nations, claiming to speak for the people of Palau, even though I do not know what standing they present to support that claim, asking that the compact not be approved.

I simply want to ask the chairman and this committee to put those views in proper perspective. They do not reflect the thinking of my government or of my people.

The people of Palau are proud of what they have been able to achieve under the American Administration, and as I have stated, the ideas and principles with respect to individual freedom, political stability, economic opportunity and respect for a healthy environment are very dear to us. We cherish them and we were able to learn these ideas and principles from our association with the United States and with American citizens.

All of these are reflected in our own constitution and our democratic system of government and they are also reflected in the interrelationship between our constitution and the compact before you today.

In short, Mr. Chairman, in the view of my government and the people of Palau, America has fulfilled its basic trustee obligations to us under the trustreeship agreement. And therefore, we come before you asking that the compact provides a respectable and an honorable means to end the trusteeship system.

I want to close my summary of the statement by, once again, expressing to you, Mr. Chairman, our deep appreciation for the sup-

port that you and the Members of the Committee and your staff have extended to us. During the negotiations, we have come to you on a number of occasions to present to you difficult issues and you have been very helpful to us in resolving many of the issues that were hard to resolve within the negotiations. And your remarks to the administration representatives this morning, once again, show to us your great concern for the welfare of the people of Palau, and we will forever be in debt to you for that.

I would like to close by extending an happy invitation from myself and the Government and the people of Palau to you and to the Members of the Committee, to visit our Republic at your pleasure. Thank you.

[The prepared statement of President Salii follows:]

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STATEMENT OF

THE HONORABLE LAZARUS E. SALII

PRESIDENT, REPUBLIC OF PALAU

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

366 DIRKSEN OFFICE BUILDING

FRIDAY, MAY 9, 1986

RE

COMPACT OF FREE ASSOCIATION FOR PALAU

Chairman McClure and Distinguished Members of Committee on Energy and Natural Resources. It is indeed an honor for me to appear before you today to testify on the Compact of Free Association between the United States and the Republic of Palau. I bring greetings and sincere best wishes of my government and my people as you begin deliberating on this historic document. As we have thanked Chairmen Seiberling and Solarz in the House of Representatives, so we like to also thank you for scheduling this hearing so soon after the transmittal of the Compact to Congress by President Reagan.

My message to you today is clear and simple. My people want an expeditious end to the trusteeship system. They respectfully ask the United States Congress to promptly approve the Compact and thus make possible, at last, what they have sought to achieve for the past several years.

The people of Palau are proud and happy that after nearly 20 years of difficult negotiations and three separate plebi-

scites, we were able, by an overwhelming 72% majority, to approve free association between America and Palau.

Following that approval, our people have a strong desire to see the immediate termination of the Trusteeship Agreement which has governed our lives the past two decades. Forty years is a long time for a people to be held in a quasi-colonial status. It is my hope, therefore, that the Congress would take prompt action to approve the Compact and enable Palau to join the other new governments in Micronesia in addressing the termination issue before the United Nations this month.

The Compact restores sovereignty to our people after four hundred years of foreign domination. It recognizes our ownership of our land; it recognizes our dignity as a people, and it provides ample means with which to improve the standard of living of our people. It also provides for continued association and friendship between Palau and the United States. This unique political relationship is valuable to Palau because

in the past forty years, we have come to respect and admire your great nation and the principles of individual freedom and democracy for which it stands.

As we stated at the beginning of negotiations with your government, whatever evaluation we make of the American Administration in Palau, "we feel that one contribution has been indelible, one achievement almost unqualified." We have in Palau a firmly established constitutional government that is fully capable of carrying out its responsibilities under the Compact and is equipped to meet the challenges and promises inherent in this document.

Mr. Chairman, the Compact is not a perfect document for either party. Some critics have pointed to some present problems not solved by the Compact and some future problems implicit in the Compact. With goodwill and close cooperation between your government and ours, we are confident that any existing problems can and will be resolved. As to any problems

for the future, we have every confidence that future generations of Palauans will have the intelligence and the energy to face up to and resolve any problems that may arise.

The people of Palau are proud of what they have been able to achieve under the American Administration. In our association with the United States in the past two decades, Palauans have come to respect and have, in fact, adopted the same ideals and principles Americans hold for individual freedom, political stability, economic opportunity and a healthy environment. These are reflected in our Constitution and the democratic system of government we have established for ourselves. They are reflected, as well, in the inter-relationship between our Constitution and the Compact.

In short, in the view of the government and people of the Republic of Palau, America has fulfilled its basic trustee obligations to us, most notably, in the area of political

development, as our administering authority under the Trusteeship Agreement.

Free Association, as a preferred future political status for our people over any other options, i.e., independence, status quo or closer association with the United States, has been amply affirmed and reaffirmed by Palauan voters in the polls. In an act of self-determination, as required by both the United Nations Charter and the Trusteeship Agreement, Palauans have duly and freely expressed their views as to their political destiny. They have chosen self-government in free association with the United States over independence.

Mr. Chairman, independence, is still open as alternate status option for Palau. At some distant time in the future, it might be considered. For now and for the foreseeable future, we do not consider it as realistic.

The Compact of Free Association between your country and ours before you today provides for a legal and political

foundation upon which we will build our new partnership. At the same time, it forms a sound basis for an honorable termination of the dated Trusteeship Agreement for the Trust Territory of the Pacific Islands.

Mr. Chairman, a question has been asked of us with respect to United Nations membership. It is clear that Palau, like any emerging country, aspires for full recognition of its sovereignty and equal standing among the community of nations represented in the United Nations. But, the time for seeking this membership is not yet upon us. Transition from trusteeship to free association status will be a time consuming process for us and will be a learning experience for the government and the people of Palau. Prior to seeking admission to the United Nations, I assure your Committee that full consultations will be held with the United States. And United Nations membership would come about only after a period of time when Palau has sufficiently exercised internal self-government

and has gained experience and maturity in the conduct of its foreign affairs and international relations pursuant to appropriate Compact provisions.

While we are on membership of international organizations, Mr. Chairman, allow me to take this opportunity to thank the Government of the United States for sponsoring associate membership applications for Palau in the U.N. Economic and Social Commission for Asia and the Pacific. Palau was admitted as ESCAP associate member on April 24 of this year. My government intends to seek full membership of this United Nations regional organization after the Compact takes effect and we look up to the United States for sympathetic consideration and support.

In approving Free Association Compact on February 21st this year, the Palauan voters for the third time freely expressed their views on the question of their political future as witnessed by the United Nations Observer Mission. However, some have alleged that the voters were pressured to vote "yes"

lest the United States withhold from Palau its financial assistance. As Plebiscite Commissioner, I was not aware, nor any official of my Administration, of any U.S. pressures to influence the voting. At no time was there any threat, implied or direct, that unless the Compact of Free Association was approved, the United States would cut off or restrict aid to Palau. If there was pressure, at all, it was from Palau urging the United States to terminate the trusteeship arrangement as early as possible after the third Compact plebiscite.

Mr. Chairman, another concern has also been expressed implying that consultation requirement of the Compact is tantamount to U.S. veto over Palau foreign affairs policy. Under Title One, Article II, the United States Government recognizes Palau's full capacity to conduct foreign affairs and international relations in its own name and right. This includes, among other things, recognition of the competency of Palau to enter into treaties and other international agreements

with foreign countries or with regional or international organizations. Consultation between Palau and the United States is required only under circumstances when, in conducting its foreign affairs, Palau might infringe upon the United States defense and security interests.

Palau commits itself, under Section 313, to refrain from activities which, after consultation, are determined by the United States to be incompatible with its defense and security authority and responsibility under Title Three of the Compact.

We expect this consultation process to be on a continuing, case-by-case basis, and as a means for one government to keep the other informed on foreign affairs matters that may have mutual impact. Should, for some reason, disagreements arise, both the United States and Palau will resort to the dispute settlement procedure as agreed upon under Section 351 of the Compact.

In a word, Mr. Chairman, we do not regard consultation requirement as giving the United States Government a veto power over Palau's foreign affairs policy.

At present and in the foreseeable future, I do not see any security threat to Palau which would warrant the United States to come to its defense. As President of this Republic, however, it is my constitutional responsibility to ensure that contingency plans are in place in the event of belligerent exigencies or threat thereof. Recognizing its inability to defend itself against hostile forces from without, Palau has elected to delegate defense and security authority to the United States, as mutually negotiated and agreed upon under Title Three of the Compact, and relevant subsidiary agreement on U.S. military use and operating rights.

As you are well aware, Mr. Chairman, the nuclear issue has posed a unique problem in the Palau Compact. I am happy to report that this matter has been finally resolved by

reconciling the language of Section 324 to the nuclear prohibition of Article II, Section 3, of Palau Constitution. At the same time, U.S. nuclear propelled or powered vessels or aircraft are allowed entry into Palau territorial jurisdiction with Palau agreeing not to require the United States to confirm nor deny presence of nuclear weapons on board said vessels or aircraft. With the Constitution and the Compact now compatible, the 72% majority vote on February 21st was a resounding affirmation of the Palauan people's choice for close and friendly relations with the United States.

And finally, Mr. Chairman, my government has no objection to and readily accepts the same congressional amendments incorporated in Public Law 99-239 approving the Compact of Free Association for the Federated States of Micronesia and the Republic of the Marshall Islands. We ask, however, that federal programs, grants and services extended to our sister governments be extended to Palau as well. After all, our three governments,

although separate, are in identical free association relationship with your government, and ought to be treated as equally as possible.

I hope that these few remarks will be of some assistance in your Committee's deliberations. In closing, I would like to thank you, Mr. Chairman and the distinguished members of the Committee for your interest in the welfare of Palau and its future, and allow me to once again urge your Committee and the entire United States Congress to approve Palau Compact without undue delay. I thank you.

A REVIEW OF MAIN COMPACT PROVISIONS

AND

THE OFFICIAL POSITION OF THE REPUBLIC OF PALAU

The history of the Compact for Palau has taken a number of distinct developments not related to the other Micronesian entities.

In August, 1982, Palauan and American representatives executed the original Compact of Free Association for Palau. This original Compact was multilateral in scope and included the Federated States of Micronesia and the Republic of the Marshall Islands. The Compact was to be approved pursuant to the constitutional requirements for each Micronesian entity and it was to take affect only after such approval.

On February 10, 1983, a plebiscite was held in Palau under the auspices of the United Nations, and Free Association was approved by 62.1% of the voters. This was a clear majority. The Compact ballot contained a second issue relating to harmful substances as defined under the Constitution of Palau. 52.3% of the votes cast were favorable to this provision. The Government of the Republic of Palau required a 75% approval of this issue and by Supreme Court (of Palau) decision determined the Compact could not come into effect for failure to meet the constitutional mandate.

A revised bilateral version of the Compact was executed on May 23, 1984. Free Association was the political choice for Palau as expressed in the February 10, 1983, plebiscite.

The revised Compact was presented to the electorate of Palau to meet the 75% constitutional requirement as to harmful substances. On September 4, 1984, the vote on the revised Compact was held, and 67% of the electorate approved the Compact provisions. This large majority was still insufficient to meet Palau's constitutional approval process.

Renegotiations continued after this vote, focusing on the harmful substances issue which had prevented previous approval of the Compact as a whole. Traditional and Palau National Congress leaders formulated a further revised Compact. This Compact was signed on January 10, 1986, and was approved by the Palau National Congress on January 21, 1986. A third plebiscite was then held wherein 72.2% of the voters approved the Compact.

This Compact was revised to eliminate any constitutional barriers that might exist between prior Compacts and the Palau Constitution. This was done by associating the United States responsibilities under TITLE III (Security and Defense) with the precise language of Article II, Section 3 of the Constitution of Palau. This language requires only majority vote for approval if specific items or harmful substances are excluded from Palau. The United States, in Section 324 of the Compact agreed not to engage in these constitutionally prohibited practices and thereby rendered the Compact and the Constitution of Palau compatible. The United States, however, continues to have the authority necessary to carry-out its obligations under TITLE III of the Compact.

The Government of Palau certified the results of the Compact

plebiscite since its internal procedural and legal requirements were fulfilled. With this certification, the Republic of Palau officially informed the United States that its constitution approval process was complete and conformed with Section 411 of the Compact. Only the United States remains to complete its approval process.

The people of the Republic of Palau through an act of self-determination, have fully ratified the Compact of Free Association pursuant to Section 411(a) and (b).

The terms of the Compact are set forth in a series of statements broken down into four main titles and various sections thereto. This document provides a brief overview and interpretative statement of each title of the Compact and represents the official position of the Republic of Palau on the main provisions of the Compact.

TITLE I, SECTION 111:

The people of Palau acting through their national government established by its constitution, are self-governing. This Section constitutes recognition of Palau's sovereignty, its self-governing status and sets forth the concept of Free Association upon which the government-to-government relationship with the United States is based. The people of Palau have consistently, through the exercise of their franchise, chosen Free Association as the preferred relationship with the United States.

TITLE I, SECTIONS 121-128:

The Republic has willingly bound itself to consult with the government of the United States on matters of foreign

affairs which affect defense and security matters. The United States recognizes Palau's otherwise unrestricted right to conduct foreign affairs, enter into international agreements and participate in regional and international organizations. This Section specifically includes Palau's right to enforce a 200-mile economic zone consistent with international law. The attached Appendix A further elaborates the understanding between the parties including such items as Law of the Seas, seabed mining and jurisdiction zone.

SECTIONS 141-144:

Set forth in these sections are the immigration preferences granted to Palauans including the right to enter into the United States, reside and work. This is considered an open door policy and greatly eases restrictions normally existent to foreign citizens wishing to travel and work in the United States. This set-up is a vast improvement over immigration arrangements now in effect under the Trusteeship Agreement, and reduces inconveniences to Palau citizens. Citizens of Palau are not citizens of the United States and United States laws cease to have effect in Palau.

SECTIONS 151-153:

The United States and Palau agree to establish representative offices in the respective capital of the other. Diplomatic immunities and protections prevail. These sections offer a further testimony to Palau's sovereignty as well as establish a means and mechanism for government-to-government communications and consultations.

SECTIONS 161-163:

Outlined therein are mutually agreed policies on environmental

protection and provide protection for Palau's natural resources from the activities of the United States under the Compact. Standards for environmental protection shall be jointly developed.

SECTIONS 171-177:

Provides general legal conditions, definitions and provisions on transition from Trusteeship to Free Association, and regulates various relations between Palau and the United States. These provisions are the legal underpinnings of the new status of Free Association and further support the concept of self-government for Palau.

A mutuality of legal protections and a policy of non-descrimination under the laws of the respective nations is established with regard to the nationals of each living within the jurisdiction of the other.

TITLE II, SECTION 211:

The United States Government agrees to pay Palau approximately $15.5 million on a current account basis and establish a Trust Fund with an initial deposit of $66 million. The Compact specifies annual payments and it is the position of the Republic that such payments are paid at once and not by any periodic payment schedule. The Trust Fund is irrevocably the property of Palau even in the event of any termination pursuant to TITLE IV; the terms of the Trust are found in a subsidiary agreement, whereby Palau will invest the Fund so that at the end of fifteen years, it will generate sufficient revenue to meet Palau's current expense needs.

SECTION 212:

Under section 212, the United States agrees to construct a Babeldaob road system to be completed by the sixth anniversary of the Compact. The location and specifications of this road system shall be mutually agreed and will be one of the first and most important issues dealt with upon approval of the Compact.

This section provides the sum of $36 million for capital account purposes to be made available upon the effective date of the Compact. Palau has exclusive jurisdiction as to how such funds are spent but has agreed to establish a five year national development plan which will be reviewed annually by the United States.

SECTION 213:

This section provides a one time payment of $5.5 million on the effective date of the Compact for impact assistance relating to activities of the United States in Palau. By an exchange of letters between the two governments (Appendix B, Page 2), a formula for meeting U.S. military land needs is established (reference: Section 322 of Compact) and the bulk of fund may be used by the Government of Palau to affect the impact of U.S. military activity on sites yet to be determined.

SECTIONS 214-215:

These sections provide that any funds remaining in the Trust Territory for Palau on the effective date of the Compact accrue to Palau, and that an inflation formula, with a seven percentage cap shall be applied to the annual funding under the Compact to Palau.

SECTIONS 221-223:

Section 221 enumerates various U.S. federal programs which continue after the Compact and sets forth annual sums which represent a conversion into cash of pre-Compact U.S program and grant assistance.

Section 222 establishes on a non-reimburseable basis technical assistance for Palau on a priority basis. Section 223 continues for approximately a four year period grants to Palauan students to complete their education in the United States.

SECTION 224:

This section provides a mechanism which enables Palau to seek additional economic or technical assistance beyond those which are specified in the Compact. This provision is most important to Palau as U.S Federal Grants make up or provide 25% of both its budget and work force. A letter elaborating the meaning of this Section was made a part of the official record of the Compact Negotiations (Appendix B, #6). While Compact funds are generally sufficient to meet current needs of the Republic, the development of a viable economy, and the infrastructure required, will take up vast portions of Compact funds and leave little to be applied for human resource needs. Under Section 224, Palau will seek continued U.S. Federal program assistance, particularly in the areas of housing, food programs, education, youth programs and similar human needs assistance.

SECTIONS 241-254:

These sections address matters of commerce, trade and tax

between Palau and the United States. While some trade barriers have been erected to protect certain U.S. enterprises, many incentives exist to promote U.S. investment in Palau.

Palau is outside the customs territory of the United States but except for certain items products of Palau enter duty free into the United States. Trade preferences are reciprocal between the two nations.

The currency of the United States is deemed to be the currency of Palau.

TITLE III: SECURITY AND DEFENSE RELATIONS:

The United States has full authority and responsibility for security and defense matters in Palau. Included in the defense of Palau, certain basing rights and foreclosure of Palau to military forces of countries other than the United States. The testing, storage, use or dumping of nuclear, toxic and harmful substances are prohibited. Nuclear weapons are also prohibited, as well as dumping of nuclear wastes. Palauans are permitted to join the armed services of the United States, and a qualified Palauan student shall be enrolled in the U.S. Coast Guard Academy and Merchant Marine Academy annually.

A joint committee of the United States and Palau will be established to handle any dispute which may arise under this Title.

TITLE IV: GENERAL PROVISIONS:

This Title outlines the approval process for the Compact on the part of both parties. An arbitration board will be established to deal with any disputes under TITLE I, II, and III. Termination of the Compact by either party is set forth.

Related agreements on telecommunications, law enforcement, military operating rights, and status of forces complete the Compact.

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THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

November 27, 1985

The Honorable Lazarus Salii
President
Republic of Palau

Dear Mr. President:

As part of the official record of negotiations between our Governments on the Compact of Free Association, I wish to reiterate the views of my Government with respect to Section 124 of the Compact.

It is important to confirm at the outset that the provisions of Section 124, and of the Compact and related agreements generally, establish the parameters of a bilateral relationship between the United States and Palau. With respect to marine sovereignty and jurisdiction over marine resources, this government-to-government relationship is set forth in the related agreement referred to in Section 462 (j) of the Compact. We note that Article I, Section 1 of Palau's Constitution contemplates the employment of treaties for the purpose of establishing a legal regime with respect to sovereignty and jurisdiction. Such treaties, therefore, are not inconsistent with Palau's Constitution, but rather are expressly provided for by it.

Section 124 (a) of the Compact affirms Palau's authority to conduct its foreign affairs relating to law of the sea and marine resource matters to the full extent recognized under international law. It is the understanding of the United States that the authority of the Government of Palau under Section 124 (a) of the Compact will include the right to declare and enforce, to the extent recognized under international law, a two hundred nautical mile exclusive economic zone for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources of the seabed, subsoil and superjacent waters surrounding Palau. The United States also recognizes that the Government of Palau will be eligible to sign

and become a party to the 1982 United Nations Convention on the Law of the Sea which also recognizes the right to exercise control over its two hundred nautical mile exclusive economic zone.

Of course within this framework the Compact preserves the ability of both our Governments to maintain our respective views on such issues as jurisdiction over highly migratory species of fish. Thus, the United States, in its relations with Palau, will adhere to its policy, consistent with international law, of not recognizing any state's claim to exercise or enforce jurisdiction over highly migratory species of fish beyond twelve nautical miles from the baselines from which the breadth of the territorial sea is measured. We anticipate that the Compact will enable our Governments to work together on this issue while pursuing a regional approach to fisheries management. It is the United States view that through international agreements we will be able to resolve any differences with respect to jurisdiction over highly migratory species of fish.

With respect to Section 124 (b) of the Compact, it is noted that the United States claims a territorial sea of three nautical miles. However, consistent with Article 3 of the 1982 United Nations Convention on the Law of the Sea and customary international law, the United States recognizes the right of coastal states to claim a territorial sea of up to twelve nautical miles so long as the rights of the United States under international law are recognized by such coastal states. Of course, United States activities both within and beyond twelve nautical miles will be consistent with applicable international law and conventions, including the Compact itself.

Sincerely,

Fred M. Zeder, II
Ambassador

THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

February 10, 1984

Honorable Lazarus E. Salii
Ambassador for Status Negotiations
and Trade Relations
Republic of Palau
Koror, Palau
Western Caroline Islands 96940

Dear Lazarus:

I am encouraged by our current discussions aimed at resolving those issues that have prevented us from concluding negotiations on the Compact of Free Association. In accordance with the understandings we have reached over the last two days, I am enclosing a new copy of the Compact of Free Association dated February 8, 1984, which updates the draft we gave you on December 2, 1983. This document represents our interpretation of those key issues which we believe have not previously been fully enunciated or clearly presented. Also contained in the enclosed document are those points on which we have previously acknowledged agreement. The February 8, 1984 draft Compact therefore constitutes a comprehensive United States response to the issues raised by Palau.

In our current round of discussions and negotiations, we have reached agreement on the following changes from the original Compact:

1. You have requested and we have agreed that the Compact make no reference to the Marshall Islands and the Federated States of Micronesia. The enclosed document is strictly a bilateral instrument between Palau and the United States.

2. You have requested and we have agreed that funding be increased from the levels specified in the original Compact, especially in the level of current account funding to be made available during the first fifteen years of the free association relationship. The enclosed Compact specifies an annual average current account increase of approximately $6 million during this period, without any decrease in the

anticipated level of funding to be made available from the investment fund between the sixteenth and fiftieth years. I can also note here our willingness to discuss alternate methods of packaging United States economic assistance, including reinstatement of the system used in the original Compact.

3. You have requested and we have agreed that United States assistance be totally converted to cash block grants. The economic assistance terms of the enclosed document effect this conversion by transforming funding which had initially been intended for federal services and inflation adjustment into fully integrated components of the overall cash block grant referred to in the preceding point.

4. You have requested and we have agreed that the terms of the Compact and its related military use and operating rights agreement be altered such that the designation of land use areas contained in them be eliminated in favor of provisions which prescribe the method for future designation of land use areas and which set out agreed levels and types of use right categories. The enclosed docment, specifically in Compact section 322, makes this change. I am also enclosing a redrafted military use and operating rights agreement which is consistent with this approach.

5. You have requested and we have agreed that the Compact be shortened but that it continue to specify the provision of certain services which the United States may, from time-to-time, perform on behalf of or at the request of Palau. The enclosed document meets this request in several areas, especially in Title One.

6. You have requested and we have agreed that, in the event additional United States assistance is required to enable your Government to meet the human and social needs of the people of Palau, the Compact provide a means for making such assistance available to Palau. Therefore the enclosed draft provides that if the Government of Palau considers at any time that the level of Compact funding is not sufficient to provide properly for the needs of the people of Palau, requests for United States federal programs such as those relating to health, education, social

services and food supplements can be initiated by Palau and made directly to the United States Government. These programs would be provided through Congressional authorization.

If, as a result of these considerations, Palau decides to move forward, the United States acknowledges the following:

1. You have requested and we have agreed to meet with you at any mutually convenient time and place for the purpose of concluding these negotiations.

2. You have requested and we have agreed that if we are not successful in reaching agreement on the Compact of Free Association, we will negotiate the terms of any other relationship between Palau and the United States, including a relationship based on the status of Palau as an independent state or as a United States commonwealth.

3. You have requested and we have agreed that if Palau calls another plebiscite on its future political status, the United States will provide its understanding of the nature and terms of the American-Palauan relationship which would exist on the basis of political status options other than free association.

4. You have requested and we have agreed to acknowledge that the Constitution of the Republic of Palau was conceived and implemented by the people of Palau as an important exercise of their right to self-determination. We believe that Palau is the proper party empowered to interpret the Palau Constitution and that it can bind itself by its interpretations.

You and the other members of the executive, legislative and judicial branches of the Government of Palau are to be congratulated on your dedication and perserverance in pursuing the interests of the Palauan people. Please be assured that we will continue to do all we can to assist and support you in this worthy and noble cause.

Sincerely,

Fred M. Zeder II
Ambassador

Enclosures

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11 April 1986
Serial: AG297

MEMORANDUM

TO: President, Republic of Palau

FROM: Attorney General

SUBJECT: Revised Opinion

In response to your request that expand our earlier opinion on the Compact of Free Association which was the subject of the February 21, 1986 referendum, the following information is provided. This revision does not change our earlier opinion. Rather, it only includes an expanded discussion of some of the points which you raised.

Question Presented

Question No. 1: Was the Compact of Free Association ratified by the vote taken in referendum on February 21, 1986, the results of such vote being that the "yes" votes constituted more than 50% but less than 75%?

Question No. 2: Do the provisions of Section 324 of the Compact of Free Association constitute an improper waiver of the Constitutional prohibition against the use of nuclear power plants within the jurisdiction of Palau as set forth in Article XII, Section 6 of the Constitution?

Answers

Answer No. 1. Yes. See Discussion.

Answer No. 2. No. See Discussion.

Discussion

It is clear that under most circumstances only a simple majority of the voters in a referendum is required to approve a treaty, such as the Compact of Free Association. See Article II, Section 3, Constitution. However, that same section of the Constitution requires a 75% voter approval when the proposed treaty authorizes the "...use, testing, storage, or disposal of nuclear, toxic, chemical, gas, or biological weapons intended for use in warfare..." (Emphasis Added).

It is clear from a reading of Section 324 of the Compact of Free Association that there is no authorization of any type for the use, testing, storage or disposal of nuclear weapons, or the other types of weapons designated in the Constitution, in the territory of the Republic of Palau. Thus, there is no 75% approval of the Compact required by Article II, Section 3 of the Constitution, and the provisions of that section were fully complied with upon approval of the Compact by the Olbiil Era Kelulau in the manner prescribed and by the approval of more than 50% of the voters.

Some individuals have put forth the proposition that since Section 324 of the Compact authorizes the United States to operate nuclear powered vessels within the waters of the Republic, and that since such vessels are powered by a "nuclear power plant", a vote of 75% was required to approve the Compact. As noted above, this argument is based upon an erroneous reading of Article II, Section 3, Constitution, since that section refers only to, and applies only to, weapons.

We do note that Article XIII, Section 6, Constitution, refers to nuclear power plants. That Section reads:

> Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of not less than three-fourths (3/4) of the votes cast in a referendum submitted on this specific question."

The first comment that needs to be made is that this section of the Constitution does not have any applicability to the approval or disapproval of the Compact. The Compact approval procedure is governed exclusively by Article II, Section 3, Constitution. As noted above, it is clear that the vote in referendum on the Compact complied with the dictates of Article II, Section 3, and that the Compact is approved in accord with the Constitutional requirements of the Republic of Palau.

Article XIII, Section 6, in its relevant provisions, prohibits the use of nuclear power plants in the Republic, unless that use is approved by 3/4 of the votes cast in a referendum on that particular question. This provision applies to actions by the Government of Palau or persons under Palauan jurisdiction engaged in activities not otherwise authorized pursuant to the Constitution and laws of Palau. It would be an anomaly to apply Article XIII, Section 6 to a foreign government carrying out major governmental powers as authorized under a treaty approved in accordance with Article II, Section 3.

Once the Chief Executive has signed an agreement and notified the other government concerned that the treaty has been ratified by the Olbiil Era Kelulau and the people in accordance with the treaty ratification provisions of Article II, Section 3 of the Constitution, both such actions being an exercise of the President's foreign affairs authority under Article VIII, Section 7 of the Constitution, the application of a provision such as Article XIII, Section 6, which does not govern treaty approval, in this case would operate to nullify Article II, Section 3. As noted below, no provision of the Constitution can be interpreted as nullifying another provision.

Moreover, we think that it is clear that this prohibition was intended to be, and is, a prohibition against ground based, permanent, nuclear power plants, the type of plant that produces electricity for commercial consumption. The prohibition was not intended to encompass and does not apply to the propulsion system of a ship which is not ground based, is not a permanent structure inside the jurisdiction of Palau and which is totally self contained.

The Constitutional Convention spent many hours discussing the prohibitions expressed concerning dangerous materials. It is clear from the Journal of the Constitutional Convention that ship based nuclear propulsion plants were not considered within the context of the final prohibition against nuclear power plants.

In the unlikely event that Article XIII, Section 6 were held to apply to shipboard propulsion systems, we find that Article XIII, Section 6 would still not have any effect or application on the approval of the Compact. Rather, we would be placed in the position of having a conflict between the provisions of the Compact as a validly approved treaty, and a judicial interpretation that the approval of the Compact did not permit the operation of nuclear powered vessels because of Article XIII, Section 6 of Palau's Constitution.

We note that Article XIII, Section 6 prohibits the actual use of nuclear power plants, not permission to use nuclear power plants. Thus, until there is an actual, or at least imminent, use of a nuclear power plant within the sovereign territory of Palau, there is no conflict, and this section of the Constitution cannot be applicable. If this section were found to apply to shipboard propulsion systems, and if there was a vessel which was nuclear powered operating in or preparing to enter the waters of Palau, then there would be a situation which could give rise to a judicial application, or in our view misapplication, of Article XIII, Section 6. In that unlikely event, the Constitutional procedures which could be followed to determine if the government of Palau would be able to consent affirmatively to operation of a nuclear powered vessel would include a vote pursuant to Article XII, Section 6 in which the people of Palau would be able to approve or disapprove such use.

Finally, even if it were held that approval of the Compact under Article II, Section 3 was not valid as to the nuclear powered vessel provision of Section 324, we find that the drafters of the Constitution clearly considered the possibility of such a conflict, and provided an additional mechanism to deal with it. That procedure is set out in Article XV, Section 11, Constitution:

> Any amendment to this Constitution proposed for the purpose of avoiding inconsistency with the Compact of Free Association shall require the approval by a majority of votes cast on that amendment and in not less than three fourths of the states. Such amendment shall remain in effect only as long as the inconsistency continues.

This Section makes clear a number of factors important to the instant case.

First and foremost this section clearly contemplates on its face that the Constitution and the Compact can both exit at the same time even when there is an inconsistency between them. From this, it is clear that the mere existence of a conflict between Article XIII, Section 6 of the Constitution and Section 324 of the Compact would have absolutely no effect upon the approval of the Compact itself. Article XV, Section 11 refers to the Compact of Free Association. It does not refer to a "proposed" Compact of Free Association. The language most clearly indicates that the inconsistency contemplated is between present, not proposed, documents.

If we were to make the assumption that an inconsistency between the Constitution and the Compact renders the approval process of the Compact null and void, then Article XV, Section 11, would be a nullity, proscribing a remedy for a situation that cannot arise. It is axiomatic that all provisions of the Constitution must be interpreted so as to give them meaning and any interpretation that renders the language a nullity must be rejected.

There is no question that the Constitution is the supreme law of the Republic of Palau. The remedy for the inconsistency contemplated by Article XV, Section 11 is amendment to the Constitution. If were held that there is a present conflict between Article XIII, Section 6, Constitution, and Section 324, Compact, then the dictates

of the Constitution would prevail, and until such time as the Constitution were amended pursuant to the provisions of Article XV, Section 11, both the Constitution and the Compact would exist. The effect of the inconsistency would be that the provisions of section 324 of the Compact relating to nuclear powered warships would be stayed. However, for the reasons stated above, we feel that such a holding is extremely unlikely, would be erroneous, and would be reversed on appeal.

In addition, we note that under customary international law and the Vienna Convention on the Law of Treaties a sovereign government cannot generally assert its internal constitution and laws as a justification for not performing its obligations under a treaty. The exception is where the other government participating in the treaty was on notice when it entered into the treaty of the conflicting requirements of the non-performing government's internal laws. (These principles are set forth in Articles 27 and 46 of the Vienna Convention and represent the current international practice of states). While the United States, as Administering Authority under the trusteeship, could be regarded as being on notice of the requirements of Article II, Section 6 of our Constitution, application of Article XII, Section 6 is merely a matter of speculation based on an interpretation of the Constitution which the Government of Palau has expressly rejected.

The United States cannot be expected to rely upon, or accept that it is on notice of, an interpretation of Palau's Constitution which is different from that of the Government of Palau, and which is merely a matter of conjecture and opinion at this point. Indeed, with certification by the Government of Palau that the approval process has been completed in accordance with the Constitution, the United States is on notice that no internal constitutional or legal obstacle exists to full Compact implementation by both our governments.

Because the Constitution is the supreme law of the land, the Government of Palau would be bound by a judicial interpretation that approval of the nuclear powered vessel provision of Compact Section 324 was subject to approval under Article XIII, Section 6 of the Constitution. However, such a judicial ruling would not prevent the United States from claiming that it has the right to operate nuclear powered vessels pursuant to Section 324 of the Compact as approved under Article II, Section 3 of the Constitution. Thus, if Palau informs the United States after the effective date of the Compact that its court has interpreted the Constitution in a manner different than the government of Palau had interpreted it during the negotiations, and on that basis Palau notifies the United States that the nuclear powered vessel clause is not effective in the view of the Government of Palau, it can be expected that the United States will not recognize any restriction on its right to operate nuclear powered vessels in Palau by virtue of such a change in Palau's internal legal position. Moreover, it can be assumed that the United States will reserve the right to treat any action by Palau to prevent operation of nuclear powered vessels as a breach of the Compact. If this occurs the dispute procedures of Title Three of the Compact would be the logical avenue for consultations, and the matter would have to be resolved on a government-to-government basis in accordance with international law.

In summary, we find that Article II, Section 3, Constitution, is the only provision of the Constitution which governs the approval of the Compact of Free Association, and that the Compact of Free Association has been approved in accord with those provisions. It is our opinion that Article XIII, Section 6, Constitution, has no applicability to the approval of the Compact of Free Association. We believe that Article XIII, Section 6 does not apply to shipboard propulsion systems. We further believe that if Article XIII, Section were held to apply to vessel propulsion systems, such application would have no effect upon the approval of the Compact of Free Association.

I hope that this adequately addresses the questions which you raised. If you have further questions, please let me know.

Russell R. Waller, Jr.

The CHAIRMAN. Thank you, very much, Mr. President. Having visited there before, it is my hope and my expectation my next visit will be to the Freely Associated State of Palau.

Senator MURKOWSKI. Mr. Chairman?

The CHAIRMAN. Senator Murkowski?

Senator MURKOWSKI. I wonder if when you plan that, if you would include some of the more junior members of the committee.

The CHAIRMAN. Surely. The more junior members are more widely traveled these days than is the Chair.

Senator MURKOWSKI. I have no further comment.

Senator REMENGESAN. Mr. Chairman, with your kind indulgence, and Senator Murkowski, we have also a very brief statement that is reflective of our Congress and we would like to present it in support of the compact.

The CHAIRMAN. Surely. And that statement will be made a part of the record, in full at this point. I thank you, very much.

[The statement follows:]

Second Olbiil Era Kelulau

PALAU NATIONAL CONGRESS PHONE NO.'S

P.O. BOX 6 KORO
REPUBLIC OF PALAU
96940

May 9, 1986

THE SENATE

SOLOMON R. KOROMILANG
President

GEORGE K. NGIRAKLAI
Vice President

KUNIO NAKAMURA
Floor Leader

SEN. ANDREW
TOMMY E. REMENGESAU JR.
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JOSHUA KOSHIBA
ITELBANG LUI
JOHN T. SUGIYAMA
HOKKONS BAULES
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HOUSE OF DELEGATES

SANTOS OLIKONG
Speaker

SHIRO KYOTA
Vice Speaker

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Floor Leader

CARLOS H. SALII
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HOBEO TELL
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IGNACIO ANASTACIO
JOHNNY REKLAI
T. KAZUO ASANUMA
LAURENTINO ULECHONG
MINAMI UEKI
J. SCHWARTZ TUDONG
SURANGEL WHIPPS
TAKESHI KINTOL
THOMAS PATRIS

The Honorable James A. McClure
Chairman, Committee on
Energy and Natural Resources
Dierksen Building 358
Washington, DC 20515

Dear Chairman McClure:

Before I begin explairing the concerns of the House of Delegates, I would like to thank you for this opportunity to present our views on the Compact of Free Association.

As our President has mentioned, we see the relationship of free association as a great opportunity for Palau to develop as an independent nation while still retaining the close ties and friendship it has enjoyed with the United States. We feel the strength and foundation of this new relationship lie in the terms and viability of the Compact of Free Association. For this reason, it has taken a long time for our respective governments to reach the terms by which this new relationship can develop successfully.

These terms, embodied in the Compact and the provisions contained in Palau Public Law No. 2-14, are the bases upon which Palau must build its future. It is therefore imperative that the Compact provide for all the contingencies which Palau may face in the future. Although the House of Delegates supports the concept of the Compact of Free Association, it does have certain reservations. Of particular concern to the House of Delegates is the question of the prior obligations of the United States to the people of Palau and certain specific shortcomings of the Compact. In the hope of saving time and for purposes of clarity, these issues have been set forth in the following resolutions adopted by the House of Delegates and are attached hereto:

1. That the United States allocate or distribute money to complete the Capital Improvement Projects in the Republic of Palau (i.e. the streets and roads in Koror and Babeldaob).

2. That the United States continue funding of the specific grant from the Department of the Interior for operation of the Micronesian Occupational College in the Republic of Palau.

3. That the United States appropriate and distribute the 24.1 million dollars of war claims awards to Micronesian claimants.

4. That the United States specifically exempt funds, for the Compact of Free Association between the United States and the Republic of Palau, from the Gramm-Rudmann-Hollings Act.

5. That the United States extend the Compact's four (4) year cut off period to seven (7) years, for those Palauan students who are receiving post-secondary educational assistance from the Government of the United States after the effective date of the Compact.

6. That the United States provide Compact funding to the Republic of Palau retroactive to the beginning of Fiscal Year 1986.

7. That the United States address the serious concerns of the Government and people of the Republic of Palau about certain provisions of the Compact of Free Association, as contained in Palau's House Resolution No. 2-0030-6.

The foregoing resolutions request items which the House of Delegates feels are essential to the successful development of Palau and which must be resolved prior to the termination of the trusteeship.

I would like to thank you for your time and consideration.

Respectfully,

Santos Olikong
Speaker
House of Delegates

Attachments

HOUSE RESOLUTION NO. 2-0029-6

SECOND OLBIIL ERA KELULAU

APRIL - 1986

Sixth Regular Session

A HOUSE RESOLUTION

Requesting the United States to allocate or distribute money to complete the Capital Improvement Project in the Republic of Palau (i.e. the streets and roads in Koror and Babeldaob).

OFFERED BY DELEGATE(S) Surangel Whipps

ET AL.

DATE INTRODUCED: April 25, 1986

HOUSE ACTION

COMMITTEE REFERRAL:	NONE
DATE:	NONE
STANDING COMMITTEE REPORT:	NONE
DATE ADOPTED:	April 25,1986

Mersey Kyota
CLERK

SECOND OLBIIL ERA KELULAU

Sixth Regular Session, April, 1986 HOUSE RESOLUTION NO. 2-0029-6

A HOUSE RESOLUTION

Requesting the United States to allocate or distribute money to complete the Capital Improvement Project in the Republic of Palau (i.e. the streets and roads in Koror and Babeldaob).

WHEREAS, the United States Federal Government and the Republic of Palau Government entered into an agreement in which the United States agreed to complete Capital Improvement Project in the Republic of Palau; and

WHEREAS, the Capital Improvement Project in the Republic of Palau includes, but not limited to, the construction and pavement of numerous streets and roads within the Republic; and

WHEREAS, the subject roads and streets include at least fifty two (52) miles of road construction and pavement in Babeldaob; and

WHEREAS, the subject roads and streets also include numerous roads and streets in Koror which adds to at least (4) miles; and

WHEREAS, the numerous roads and streets in the Republic of Palau cannot be completed without the fiscal assistance from the United States Federal Government; and

WHEREAS, the Republic of Palau believes the United States, in good faith, will execute the terms of the aforementioned Agreement as entered therewith; and

WHEREAS, the Republic of Palau is in an urgent need for the completion of these roads and streets; now, therefore,

BE IT RESOLVED by the House of Delegates, Second Olbiil Era Kelulau, Sixth Regular Session, April, 1986, that the United States is hereby requested to allocate or distribute money to complete the Capital Improvement Project, i.e. the construction and pavement of streets and roads in Koror and Babeldaob of the Republic of Palau; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the [illegible] United States [illegible]

States Secretary of the Department of Interior, President of the Republic of Palau, and the Speaker of the House of Delegates and the President of the Senate of the Second Olbiil Era Kelulau.

ADOPTION: April 25, 1986

AS CERTIFIED BY AND ATTESTED TO:

Santos Olikong, Speaker
House of Delegates

Harsey [illegible], Clerk
House of Delegates

HOUSE RESOLUTION NO. 2-0033-6

SECOND OLBIIL ERA KELULAU

APRIL - 1986

Sixth Regular Session

A HOUSE RESOLUTION

Requesting the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress to continue funding of the specific grant from the Department of Interior for operation of the Micronesian Occupational College in the Republic of Palau.

OFFERED BY DELEGATE(S) Ignacio Anastacio

ET AL.

DATE INTRODUCED: April 25, 1986

HOUSE ACTION

COMMITTEE REFERRAL:	None
DATE:	None
STANDING COMMITTEE REPORT:	None
DATE ADOPTED:	April 25, 1986

Hersey Kyota
CLERK

SECOND OLBIIL ERA KELULAU

Sixth Regular Session, April, 1986 HOUSE RESOLUTION NO. 2-0033-6

A HOUSE RESOLUTION

Requesting the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress to continue funding of the specific grant from the Department of Interior for operation of the Micronesian Occupational College in the Republic of Palau.

WHEREAS, on March 29, 1977, the Trust Territory Public Law No. 7-29, amended later by Public Law 7-30, created the College of Micronesia as a public corporation under its own Board of Regents; and

WHEREAS, the said law incorporated into a single post-secondary educational system the Micronesian Occupational College and the Community College of Micronesia and its affiliated School of Nursing; and

WHEREAS, Micronesian Occupational College was granted full accreditation by the Western Association of Schools and Colleges in 1977 and that such Accreditation Status was again reaffirmed in 1982; and

WHEREAS, while the Micronesian Occupational College curricula are strongly job-oriented, the mission of the college has been and still is to help students from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau develop their potential in semi-professional and occupational areas; and

WHEREAS, there are about one thousand five hundred Micronesian students who have graduated from the college; and

WHEREAS, the Department of Interior (DOI) has been providing yearly grant to fund the operation of the Micronesian Occupational College since 1977; and

WHEREAS, the yearly grant from the Department of Interior amounted to more than half of the yearly budget of the Micronesian Occupational College; and

[illegible] to the Micronesian Occupational College is not specifically provided for in the Compact of Free Association between the Republic of Palau and the United States; and

WHEREAS, the Department of Interior continued funding of the Micronesian Occupational College is not guaranteed under the Compact of Free Association; and

WHEREAS, the future of the Micronesian Occupational College is substantially and unavoidably dependent on the continuation of the Department of Interior's funding grant; and

WHEREAS, it is in the best interest of the Micronesian Islands governments that Micronesian Occupational College continue its educational services to the islands community; NOW, THEREFORE,

BE IT RESOLVED that the House of Delegates of the Second Olbiil Era Kelulau, hereby respectfully requests the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress to continue funding of the specific grant, from the Department of Interior, for operation of the Micronesian Occupational College in the Republic of Palau; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives of the United States Congress, the President of the Federated States of Micronesia, the President of the Republic of the Marshall Islands, the President of the Senate and the Speaker of the House of Delegates of the Second Olbiil Era Kelulau, and the President of the Republic of Palau.

ADOPTION: April 25, 1986

AS CERTIFIED BY AND ATTESTED TO:

Santos Olikong, Speaker
House of Delegates

Hersey Kyota, Clerk
House of Delegates

HOUSE RESOLUTION NO. 2-0035-6

SECOND OLBIIL ERA KELULAU

Sixth Regular Session

April - 1986

A HOUSE RESOLUTION

Requesting the United States Congress to appropriate and distribute the 24.1 million dollars of War Claims awards to Micronesian Claimants.

OFFERED BY DELEGATE(S) Mariano W. Carlos

ET AL.

DATE INTRODUCED: April 25, 1986

HOUSE ACTION

COMMITTEE REFERRAL: N/A

DATE: N/A

STANDING COMMITTEE REPORT: N/A

DATE ADOPTED: April 25, 1986

Herse Kyota
CLERK

SECOND OLBIIL ERA KELULAU

Sixth Regular Session, April, 1986 HOUSE RESOLUTION NO. 2-0035-6

A HOUSE RESOLUTION

Requesting the United States Congress to appropriate and distribute the 24.1 million dollars of War Claims awards to Micronesian Claimants.

WHEREAS, the Micronesian Claims Act of 1971 which was enacted by the United States Congress created the Micronesian Claims Commissions; and

WHEREAS, it was the duty of the Micronesian Claims Commission to receive, examine, adjudicate, and render final decision, in accordance with the laws of the Trust Territory and international law, with respect to (1) the Claims of Micronesian inhabitants of the Trust Territory who suffered loss of life, physical injury and property damage directly resulting from the hostilities between the Governments of Japan and the United States between December 7, 1941, and the dates of the securing of the various islands of Micronesia by the United States Armed Forces (Title I), and (2) those claims arising as postwar claims between the dates of the securing of the various islands of Micronesia by United States Armed Forces and July 1, 1951 (Title II); and

WHEREAS, the Governments of Japan and the United States entered into an agreement in 1969 to contribute ex gratia the equivalent of $10 million dollars US currency to the Micronesian inhabitants of the Trust Territory to compensate them for their suffering caused by World War II, each Government contributing the equivalent of 5 million dollars US currency (Title I); and

WHEREAS, the Micronesian Claims Commission issued awards under Title I in the amount of 34,349,509 dollars in US currency; and

WHEREAS, since there were insufficient funds to pay the entire amount of the awards, each claimant was paid a pro rate share of the award; and

WHEREAS, the remaining unpaid balance of the award made under Title I of the Micronesian Claims Act of 1971 is 24.1 million dollars in US currency; and

WHEREAS, in 1977 the United States Congress authorized the appropriation of funds to pay the 50% of the unpaid awards owed by the United State if Japan would contribute its 50% share; and

WHEREAS, the congressional records of the United States Congress has made it very clear that the United States Congress will appropriate and pay to Micronesian Claimants the 24.1 million dollars, which represents the unpaid balance of the award made to Micronesian Claimants under Title I, if the Secretary of Interior certifies to the Congress that the Government of Japan had contributed to the Micronesian governments an equivalent of 12 million dollars in Aids; and

WHEREAS, the National Congress of the Republic of Palau has received official information that the government of Japan has contributed more than 12 million U.S. Dollars in aid to the Micronesian governments since 1978; and

WHEREAS, the National Congress of the Republic of Palau has transmitted to the Department of Interior the official information that the government of Japan has met its part of the contribution in aid to the Micronesian governments; and

WHEREAS, the Department of Interior has taken no action to certify that the Micronesian governments have receive more than 12 million dollars in aids from the Government of Japan so that the United States Congress may appropriate and pay the 24.1 million dollars to the Micronesian claimants before the termination of the Trusteeship Agreement; and

WHEREAS, Palau had approved the Compact of Free Association with the United States; and

WHEREAS, it is the will and the desires of the Palauan people to be paid their War Claim awards in full before the termination of the Trusteeship Agreement; and

HOUSE RESOLUTION NO. 2-0035-6

WHEREAS, good number of individuals due awards have died without ever receiving the total amount due to them for their suffering and property damages during World War II; now, therefore

BE IT RESOLVED that the U.S. Congress appropriate 24.1 million dollars to pay Micronesian claimants their full shares of their adjudicated claims upon certification by the Micronesian Governments that they have received from the government of Japan goods and services equivalent to at least 12 million dollars since 1978; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the United States President, United States Congress, Secretary of the U.S. Department of Interior, President of the Federated States of Micronesia, President of the Republic of the Marshall Islands, Governor of the Commonwealth of the Northern Marianas, the President of the Republic of Palau, the Speaker of the House of Delegates and the President of the Senate of the Second Olbiil Era Kelulau and the Minister of State of the Republic of Palau.

ADOPTION: April 25, 1986

AS CERTIFIED BY AND ATTESTED TO:

Santos Olikong, Speaker
House of Delegates

Bersey Kyota, Clerk
House of Delegates

HOUSE RESOLUTION NO. 2-0031-6

SECOND OLBIIL ERA KELULAU

Sixth Regular Session

April - 1986

A HOUSE RESOLUTION

Requesting the President of the U.S., the President of the Senate & the Speaker of the House of Representatives of the U.S. Congress to specifically exempt funds, for the Compact of Free Association between the U.S. & the Republic of Palau, from the Gramm-Rudmann-Hollins deficit reduction law.

OFFERED BY DELEGATE(S) Ignacio Anastacio

ET AL.

DATE INTRODUCED: April 25, 1986

HOUSE ACTION

COMMITTEE REFERRAL: N/A

DATE: N/A

STANDING COMMITTEE REPORT: N/A

DATE ADOPTED: April 25, 1986

CLERK

SECOND OLBIIL ERA KELULAU

Sixth Regular Session, April, 1986 RESOLUTION NO. 2-0031-6

A HOUSE RESOLUTION

Requesting the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress to specifically exempt funds, for the Compact of Free Association between the United States and the Republic of Palau, from the Gramm-Rudmann-Hollins deficit reduction law.

WHEREAS, negotiation for the Compact of Free Association between the United States and the Republic of Palau has been going on for almost sixteen years now; and

WHEREAS, on January 10, 1986, President Lazarus E. Salii of the Republic of Palau and Ambassador Fred M. Zeder of the United States signed the Compact of Free Association between the United States and the Republic of Palau signaling the beginning of a new political relationship; and

WHEREAS, on January 23, 1986, the Second Olbiil Era Kelulau (Palau National Congress) overwhelmingly passed a legislation approving and ratifying the said Compact and setting February 21, 1986 as the Plebiscite day for all Palauan voters to freely choose their political status through election; and

WHEREAS, prior to February 21, 1986 referendum, Ambassador Zeder and his staff officially announced the deeply desired exemption of the level of funds under the Compact of Free Association from the Gramm-Rudmann-Hollins deficit reduction act; and

WHEREAS, on February 21, 1986, a record of seventy-two percent (72%) of the Palauan voters approved the said Compact of Free Association; and

WHEREAS, the voters of the Republic of Palau, realizing such exemption of Compact funding from Gramm-Rudmann-Hollins deficit reduction act, voted among other positive reasons to overwhelmingly approved the Compact document; and

WHEREAS, the Olbiil Era Kelulau Plebiscite [illegible] on February 24, 1986, and have sent the approved Compact to President Ronald Reagan and the U.S. Congress for their respective approval; and

HOUSE RESOLUTION NO. 2-0031-6

WHEREAS, the House of Delegates of the Second Olbiil Era Kelulau is extremely concerned with the Gramm-Rudmann-Hollins deficit reduction law as it may possibly reduce the Compact funds for the Republic of Palau; NOW, THEREFORE,

BE IT RESOLVED that the House of Delegates of the Second Olbiil Era Kelulau, hereby respectfully requests the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress to specifically exempt funds, for the compact of Free Association, from the Gramm-Rudmann-Hollins deficit reduction law; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress, the President of the Senate and the Speaker of the House of Delegates of the Second Olbiil Era Kelulau, and the President of the Republic of Palau.

ADOPTION: April 25, 1986

AS CERTIFIED BY AND ATTESTED TO:

Santos Olikong, Speaker
House of Delegates

Hersey Kyota, Clerk
House of Delegates

HOUSE RESOLUTION NO. 2-0036-6

SECOND OLBIIL ERA KELULAU

Sixth Regular Session

April - 1986

A HOUSE RESOLUTION

Requesting the Congress of the U.S. of America to extend the Compact's four (4) year cut off period to seven (7) years, for those Palauan students who are receiving post-secondary educational assistance from the Government of the U.S. after the effective date of the Compact.

OFFERED BY DELEGATE(S) Joseph T. Kintol,

Ignacio Anastacio, Minami Ueki ET AL.

DATE INTRODUCED: April 25, 1986

HOUSE ACTION

COMMITTEE REFERRAL:	None
DATE:	None
STANDING COMMITTEE REPORT:	None
DATE ADOPTED:	April 25 1986

CLERK

SECOND OLBIIL ERA KELULAU

Sixth Regular Session, April, 1986 HOUSE RESOLUTION NO 2-0036-6

A HOUSE RESOLUTION

Requesting the Congress of the United States of America to extend the Compact's four (4) year cut off period to seven (7) years, for those Palauan students who are receiving post-secondary educational assistance from the Government of the United States after the effective date of the Compact.

WHEREAS, negotiation for the Compact of Free Association between the United States and the Republic of Palau has been going on for almost sixteen years now; and

WHEREAS, on January 10, 1986, President Lazarus E. Salii of the Republic of Palau and Ambassador Fred Zeder of the United States signed the Compact of Free Association between the United States and the Republic of Palau signaling the beginning of a new political relationship; and

WHEREAS, on January 23, 1986, the Second Olbiil Era Kelulau (Palau National Congress) overwhelmingly passed a legislation approving and ratifying the said Compact and setting February 21, 1986 as the Plebiscite day for all Palauan voters to freely choose their political status through election; and

WHEREAS, the people of the Republic of Palau want to encourage its citizens to seek post secondary education; and

WHEREAS, the vast majority of Palauan citizens cannot afford to attend post-secondary education without governmental assistance; and

WHEREAS, most Palauan students who are currently enrolled in post secondary education in the United States still must supplement their educational grants and scholarships with work-study or part-time employment; and

WHEREAS, the work-study programs and part-time employment the Palauan students must perform take valuable time away from their studies; and

WHEREAS, English is not the native language of Palauan students so it [illegible] lost or [illegible] study time; and

HOUSE RESOLUTION NO. 2-0036-6

WHEREAS, the language barrier along with having to work while attending post secondary school will detract from Palauan students effective study time, it is difficult, if not impossible, for Palauan students to complete their post secondary education in four (4) years; and

WHEREAS, Article II, Section 223 of the Compact of Free Association only provides for four years funding for those Palauan citizens who are, or become, eligible for Governmental Assistance the day preceding the effective date of the Compact, there will be a number of Palauan students who have not completed their studies who will be left in a transition period without immediate governmental assistance; and

WHEREAS, the people of the Republic of Palau seek to avoid any obstacles or problems which may detract or interfere with Palauan citizens completing their post secondary education; now, therefore,

BE IT RESOLVED, that the House of Delegates, Second Olbiil Era Kelulau, Sixth Regular Session, April, 1986, hereby requests the Congress of the United States of America to extend the Compact of Free Association four year cut of period to seven years for those Palauan students who are receiving post secondary education assistance from the Government of the United States, on the effective date of the Compact of Free Association; and

BE IT FURTHER RESOLVED, that certified copies of this resolution be transmitted to the Congress of the United States, President of the United States, President of the Republic of Palau, Minister of Social Services of the Republic of Palau, and the Speaker of the House of Delegates and the President of the Senate of the Second Olbiil Era Kelulau.

ADOPTION: April 25, 1986

AS CERTIFIED BY AND ATTESTED:

House of Delegates

House of Delegates

HOUSE RESOLUTION NO. 2-0034-6

SECOND OLBIIL ERA KELULAU

Sixth Regular Session

April - 1986

A HOUSE RESOLUTION

To request the U.S. Congress & the U.S. Government to provide for the funding of the Republic of Palau under the terms of the Compact of Free Association between the U.S. of America and the Republic of Palau; to provide the subject funding retroactive to the beginning of the Fiscal Year 1986; and for related purposes.

OFFERED BY DELEGATE(S) Surangel Whipps

ET AL.

DATE INTRODUCED: April 25, 1986

HOUSE ACTION

COMMITTEE REFERRAL: N/A

DATE: N/A

STANDING COMMITTEE REPORT: N/A

DATE ADOPTED: April 25, 1986

Hersey Kyota
CLERK

SECOND OLBIIL ERA KELULAU

Sixth Regular Session, April, 1986 HOUSE RESOLUTION NO. 2-0034-6

A HOUSE RESOLUTION

To request the United States Congress and the United States Government to provide for the funding of the Republic of Palau under the terms of the Compact of Free Association between the United States of America and the Republic of Palau; to provide the subject funding retroactive to the beginning of the Fiscal Year 1986; and for related purposes.

WHEREAS, the Micronesian Island-Nation (Trust Territory of the Pacific Islands) was placed under the administering authority of the United States of America under the terms of the Trusteeship Agreement entered into by the United States with the Security Council of the United Nations on April 2, 1948, and approved by the United States on July 19, 1947; and

WHEREAS, both the United States and the people of Micronesia have been working together to develop an agreement by which they can maintain the harmony the two nations have shares for approximately 40 years; and

WHEREAS, the Micronesian Island-Nation has since separated into four (4) different political entities: the Federated States of Micronesia (i.e. Kosrae State, Pohnpei State, Truk State and Yap State), the Commonwealth of the Northern Marianas, the Republic of the Marshall Islands, and the Republic of Palau; and

WHEREAS, the Commonwealth of Northern Marianas entered into a political union with the United States of America on or about 1978; and the Commonwealth of Northern Marianas is currently receiving funds under the commonwealth political status; and

WHEREAS, after the separation of the several Micronesian entities (i.e. the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau), each nation has shown, and continues to show, its willingness to enter into a separate political union under the principles of a Government of Free Association; and

WHEREAS, all political entities of the once political union of Micronesia, except the Commonwealth of Northern Marianas, will now enter into and receive funds as separate political unions with the United States under the terms of Compact of Free Association (i.e. after both the United States of America and the Government of each respective political entity approve the respective Compact of Free Association pertaining thereto); and

WHEREAS, the United States of America and the Federated States of Micronesia have approved the Compact of Free Association to establish a Free Association political union between the Federated States of Micronesia and the United States; and

WHEREAS, the United States of America and the Republic of the Marshall Islands have approved the Compact of Free Association to establish a Free Association political union between the Republic of the Marshall Islands and the United States Government; and

WHEREAS, the Olbiil Era Kelulau indicated popular support for the Compact of Free Association between the Republic of Palau and the United States of America by passing Senate Bill No. 2-116 by a vote of 13-1 in the Senate and by a 12-0 vote in the House of Delegates on January 16, 1986; and

WHEREAS, the Republic of Palau approved the proposed Compact of Free Association for the Republic of Palau and the United States of America by at least seventy-two percent (72%) on February 21, 1986; and

WHEREAS, the Palauan approved Compact of Free Association is before the United States Government and United States Congress for review and consideration; and

WHEREAS, the Republic of Palau, like the Federated States of Micronesia and the Republic of the Marshall Islands, is under an inherent need of the Compact of Free Association funding; and

HOUSE RESOLUTION NO. 2-0034-6

WHEREAS, the House of Delegates of the Second Olbiil Era Kelulau (Palau National Congress) believes, that it is clear and appropriate that the Republic of Palau, Republic of the Marshall Islands and Federated States of Micronesia receive fundings at the same time and at the first negotiated Compact level of funding under their respective Compacts of Free Association from the United States; NOW, THEREFORE,

BE IT RESOLVED that the United States Government and the United States Congress are hereby requested, jointly and individually, to provide funding to the Republic of Palau under the funding terms of the Compact of Free Association between the Republic of Palau and the United States of America; and

BE IT FURTHER RESOLVED that the United States Government and the United States Congress provide said fundings under the Compact of Free Association between the Republic of Palau and the United States of America retroactive to the beginning of Fiscal Year 1986; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the President of the United States, the United States Congress, the President of the Federated States of Micronesia, the President of the Marshall Islands, the Governor of Northern Marianas, the President of the Republic of Palau, and the President of the Senate and Speaker of the House of Delegates of the Second Olbiil Era Kelulau.

ADOPTION: April 25, 1986

AS CERTIFIED BY AND ATTESTED TO:

Santos Olikong, Speaker
House of Delegates

Hersey Kyota, Clerk
House of Delegates

HOUSE RESOLUTION NO. 2-0030-6

SECOND OLBIIL ERA KELULAU

Sixth Regular Session

April - 1986

A HOUSE RESOLUTION

Requesting the United States to recognize and favorably address serious concerns of the Government and People of the Republic of Palau about certain provisions of the Compact of Free Association.

OFFERED BY DELEGATE(S) Surangel Whipps

ET AL.

DATE INTRODUCED: April 21, 1986

HOUSE ACTION

COMMITTEE REFERRAL:	NONE
DATE:	NONE
STANDING COMMITTEE REPORT:	NONE
DATE ADOPTED:	April 25, 1986

CLERK

63-391 O - 86 - 6

SECOND OLBIIL ERA KELULAU

Sixth Regular Session, April, 1986 HOUSE RESOLUTION NO. 2-0030-6

A HOUSE RESOLUTION

Requesting the United States to recognize and favorably address serious concerns of the Government and People of the Republic of Palau about certain provisions of the Compact of Free Association.

WHEREAS, as a result of the American presence and Administration of the Trust Territory of the Pacific Islands, the people of Palau have developed a deep affinity with the American people and a desire for a strong and lasting political relationship with the United States; and

WHEREAS, the leadership of Palau shares the concerns of the people and government of the United States about growing threats to international peace and democratic freedoms throughout the world, particularly in the Pacific/Asian region; and

WHEREAS, despite its deep reservations about certain provisions of the Compact of Free Association, the Republic of Palau has approved the Compact of Free Association with the United States; and

WHEREAS, President of the Republic has negotiated, the Council of Chiefs and the Association of State Governors have endorsed, and the Palau National Congress (Olbiil Era Kelulau) by a vote of 12-1 in the Senate and 13-0 in the House of Delegates, approved the Compact of Free Association; NOW, THEREFORE,

BE IT RESOLVED that the House of Delegates, Second Olbiil Era Kelulau (Palau National Congress), Sixth Regular Session, April, 1986, that the United States recognizes deep reservations of the government and people of Palau about certain provisions of the Compact of Free Association as expressed in various formal and informal communications with the officials and agencies of the United States Government and the United States Congress is respectfully requested to amend the Compact as follows and for the reasons setforth below:

landowners in the event the U.S. decides to build permanent military bases in Palau;

(2) To permit the citizens of Palau, while residing in the United States, to be eligible and to receive federal and state domestic assistance as if they were U.S. citizens, as follows:

"Section 141 (d). Citizens of Palau, who establish habitual residence in 50 states of the United States, are eligible for and may receive federal and state domestic assistance as if they were citizens of the United States."

(3) To strengthen cultural and political relations between Palau and the United States by allowing Palau students to receive post-secondary federal assistance during the life of the Compact, as follows:

"Section 223. The citizens of Palau shall be eligible, if otherwise qualified, to receive post-secondary education assistance from the Government of the United States during the life of the Compact."

(4) To allow Palau to build a strong private sector with federal assistance for economic, business and community development as follows:

"Section 224. Federal programs and services, identified by the Federal Domestic Assistance Catalog of the Office of Management and Budget for economic, business and community development and including Farmers Home Administration and Small Business Administration, are hereby extended and made applicable to Palau upon application by Palau. The Government of the United States and Palau may agree from time to time to the extension of additional U.S. grant assistance and of U.S. services and programs as provided by the laws of United States."

(5) To promote and strengthen commerce and trade between Palau and the United States by allowing full benefits of old Compact provision, the General Headnote 3(a) to majority-owned U.S. and Palauan businesses, as follows:

(a) shall not apply to the following, unless the business

producing or manufacturing the products are at least majority-owned by U.S. or Palauan citizens:

(1) watches, clocks and timing apparatus provided for in sub-part E of part 2 of schedule 7 of the Tariff Schedules of the United States;

(2) buttons (whether finished or not finished) provided for in item 745.32 of such Schedules;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwears, handbags, luggages, flat goods, work gloves, and leather wearing apparels which were not eligible articles for purposes of Chapter V of the Trade Act of 1974 (19 USC 2461 et seq.) on April 1, 1984; and

BE IT FURTHER RESOLVED that it is a firm belief of the Palau National Congress that the adoption of these amendments and favorable consideration of other concerns expressed previously to the United States President by the U.S. Congress will only lead to future political stability and economic prosperity of the Republic of Palau and thereby further strengthen political, economic and social relations between the Republic of Palau and the United States; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the President of the United States, Ambassador Fred M. Zeder, and the Chairman of the U.S. Senate Committee on Energy and Natural Resources, and the Chairman of the U.S. House Committee on Interior and Insular Affairs, the Presidents of the U.S. Security Council and Trusteeship Council, and the President of the Republic of Palau.

ADOPTION: April 25 [illegible]

CERTIFIED BY AND ATTE[illegible]

Santos Olikong, Speaker
House of Delegates

Hersey Kyota, Clerk
House of Delegates

The CHAIRMAN. I have just a very few questions, if I may do so. Palau has certified to the United States that the compact has been approved in accord with its constitutional process. Is it possible that this certification could be challenged in Palau's courts?

President SALII. It is possible, sir. We have a very open society, open government, and any citizen can bring anything before our courts to resolve any civil or constitutional issues which may not be clear to them.

The CHAIRMAN. Have you considered the possibility of instituting that challenge in order to lay to rest the ambiguity or uncertainty?

President SALII. Yes, sir. In our review of the situation, before I certified the result of the plebiscite, we considered the desirability of bringing a friendly suit to clarify the issue with respect to the required number of votes.

We decided, however, that that would not help the situation. We did not want to appear ridiculous because the case is so clear to us that the plebiscite simply required a majority approval under the terms of the compact, itself, and by the provisions of our Constitution. So we decided not to even take a friendly lawsuit before the court on this issue.

The CHAIRMAN. In Section 324, Palau assures the U. S. the right to operate nuclear capable, or nuclear propelled vessels and aircraft within Palau without either confirming or denying the presence or absence of nuclear weapons.

In your view, is this a new position for Palau, or a clarification of Palau's intent under previous compact drafts?

President SALII. This is not a new position in the sense that from the beginning of negotiations, Palau agreed to grant to the United States the authority of transit. It is new in the sense that it was agreed to by the American negotiators; it is new in the sense that a section 314 in the previous two compacts was taken out, and in effect, replaced by this new section.

The CHAIRMAN. If at any time you would like to make a comment with respect to the questions from the respect of the Congress, I would welcome that intervention if you would like to do it. But, I will not address questions to you separately unless you desire to make comment.

Senator REMENGESAN. Thank you, Mr. Chairman. I will reserve my statement at the end.

The CHAIRMAN. Article 13, section 6 of the Palau Constitution states, "Substances, such as nuclear, toxic, chemical, gas or biological weapons intended for use in warfare, nuclear power plants and waste materials therefrom shall not be used, tested, stored or disposed of within Palau without approval of 75 percent in a referendum."

One difference between this provision and article 2, section 3, is the inclusion of a prohibition on nuclear power plants. Would you please comment on why the compact does not have a conflict with this section, particularly regarding the definitions of nuclear power plants and nuclear powered vessels?

President SALII. It is the opinion of the Attorney General—and I have submitted a copy of the opinion to the committee—article 13, section 6, relates to land based nuclear power plants. It does not address the question of nuclear power plants which may be on

board vessels, and therefore, it is clear that the compact, which only addresses nuclear-capable vessels and aircraft, does not fall under article 13, section 6; rather it is on section 2—article 2, section 3.

The CHAIRMAN. Senator Murkowski, do you have any further questions?

Senator MURKOWSKI. The only question I have, Mr. Chairman, is one that has come up and I am not sure the question if of a classified nature—it concerns discussion before this committee for some time, when we were looking at other alternatives to our security needs in the Pacific and there was some discussion as to the question of continuity with regard to our bases in the Philippines, and Palau was one of the islands considered.

I am just wondering, Mr. Chairman, if that has been eliminated as a possibility, or if His Excellency, the President, has any opinion on that.

The CHAIRMAN. Would you like, Mr. President, to comment on that—is the question addressed to him?

Senator MURKOWSKI. Yes.

President SALII. I believe, sir, that if the United States chose to do so, it has the capability under the compact of posting some of the elements now located at Subic Bay, but I would propose not in the same volume because there is simply nothing offland, in harbor facilities or areas to host them in their present levels.

The United States, under the compact, has full use of the Airai Airport and the Angaur Airport; it has full access to the Malakal Harbor area, and as a matter of fact, our National Congress has requested the United States to exercise its option with respect to the airport and to the habor right now. We would welcome the U. S. military to exercise those options at this time.

Furthermore, under the military land use agreement, the United States has access to wide areas in Palau for training and for other purposes, other than the restrictions with respect to nuclear and toxic materials.

Senator MURKOWSKI. Thank you, very much, President Salii. We sincerely appreciate that attitude.

The CHAIRMAN. Thank you, very much. Do you have a comment you would like to make at this time?

Senator REMENGESAN. Yes, Mr. Chairman. The Congress certainly appreciates your understanding as far as the compact, the funding issue; your understanding of the procedures. Certainly, it is our understanding that the compact was negotiated in good faith and credit. We intend to do our part as far as our obligations are concerned.

We look at those, the U. S. obligations as defined in the compact, particularly those Federal programs that were promised us as entitlements to supplement whatever economic assistance the United States is providing us; specifically, the investment fund.

With your indulgence, Mr. Chairman, also as stated by our President, we will be taking up and will be supporting the immediate termination of the trusteeship in the United Nations in the coming weeks. It is our understanding and hope that by the time the United Nations finally takes the final voting, that Congress, in the supplemental funding, would have been ready for enactment.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, both very much. We may have a few additional questions to submit for response in writing, for the record.

President SALII. Mr. Chairman, if I may, I believe that Speaker Santos Olikong, also, submitted a statement to the committee already, and I simply would like to request that that be made a part of this proceeding.

The CHAIRMAN. It has been made a part of the record.[1]

Thank you, gentlemen, very much.

Next, we will hear from Adm. Eugene Carroll, Center for Defense Information, and Ms. Elizabeth Bounds, Micronesia Coalition.

Your prepared statements will be placed in the record in full. You are invited, in the interest of time, to summarize the high points. Admiral Carroll, you are recognized.

STATEMENT OF REAR ADM. EUGENE J. CARROLL, JR., U.S. NAVY (RET.), DEPUTY DIRECTOR, CENTER FOR DEFENSE INFORMATION

Admiral CARROLL. Thank you, Mr. Chairman. As always, it is an honor to be invited to present the views and findings of the Center for Defense Information to the Congress.

In the interest of brevity, I will summarize three points from the formal statement.

In undertaking its trusteeship responsibilities in the Pacific, the United States willingly accepted two major responsibilities; one, to prepare the nations of the trusteeship for political independence, and to work to provide them with a measure of economic sufficiency to support that independence.

It is clear that for various reasons we have failed to satisfy either of those responsibilities and that the Compact of Free Association now under consideration for Palau clearly leaves them with a limited form of political independence and acute economic dependence on the United States.

In asking the question, "Why does this condition exist? Why have we retained these ties?", the answer lies, it appears, largely in the military area. Given our military and security interests in Micronesia, great weight, possibly a legacy of World War II, when we fought the bloody battles on the islands, we certainly don't ever want to revisit that problem, again.

But, the world has changed and the military situation clearly has changed. There is no military threat in the Southwest Pacific, or Micronesia. There is only one nation in the world which has the capability to project military power into that region. Only one nation and that is the United States of America.

That condition certainly will obtain for the remainder of this century. The Soviet Union has no naval force existing or contemplated which will threaten the establishment of any military capability in that region for the foreseeable future.

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[1] See statement inserted at the request of Senator Remengesau, pg. 135.

The administration officials, themselves, in contemplating the military requirements in Palau, specifically, have found no requirements. They simply don't have any reason to be there.

I have a picture in the back of my mind of a group of J-5's of the Joint Chiefs of Staff being ordered into a closed room and told not to come out until they develop some military requirement in Palau. And they finally come back out and say we could have a jungle training center there. Then some lieutenant colonel receives a very high mark on his fitness report, or efficiency report for innovation. And that seems to be the only thing we have ever identified that we might want to put into Palau, is a jungle training center.

The idea of a Trident submarine base there, of course, makes no sense either from strategic or economic terms.

So, we find the U.S. Government, driven by this feeling that maybe there will be some requirement for military forces or access in the area, dictating the form of article 324 of the compact. The words, of course, that create the legal questions that you have raised with the witnesses are,

> The Government of the United States has the right to operate nuclear capable, nuclear-propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau.

This is certainly the most objectionable of the military clauses, the other ones have to do with the right of access, of development, of denial of access and so on—they are also limitations upon the independence of Palau, but they do not challenge the constitution of Palau.

I think to clear the air, we ought to question U.S. insistence on this hoary subterfuge of neither confirming or denying the presence or absence of nuclear weapons.

First, it should be appreciated that this formulation was originally developed to meet the political needs of our friends and allies who did not want to have the question raised in their own political—with their political constituents for private reasons. It was never, is not related to U.S. national security considerations.

In fact, the formulation is contrary to our interests in deterring nuclear war.

Deterrence requires that our adversary be convinced that we have the nuclear strength to deal devastating retaliatory strikes if we are attacked first. To create and sustain this perception, we should be ready and willing to assert that every nuclear-capable warship is fully armed and ready now for nuclear operations against hostile forces.

It is a paradox that we now insist on a fiction that was developed for the political benefit of our friends and allies, even in a situation where it is in conflict with the wishes of a friendly group, and contrary to our own political interests.

For this reason, recognizing we have no existing requirements, no need to defend that area, no force against which to defend for the foreseeable future, and for the fact that the only critical issue in the compact are these words of article 324, we recommend that the compact not be approved in its present form and instead the administration be urged to drop the clause giving the United States

the right to operate nuclear-capable or nuclear-propelled vessels and aircraft within Palau's jurisdiction.

We would then be respecting the constitution of Palau, the independence of Palau and the wishes of the people of Palau. We would not be compromising the national security interests of the United States, but we would be reaffirming the traditional commitment of the United States to the rule of law and the right of all nations, freely, to determine their own form and conditions of government.

With that brief statement, I will offer my testimony.

[The prepared statement of Admiral Carroll follows:]

STATEMENT BY

REAR ADMIRAL EUGENE J. CARROLL, JR., U.S. NAVY (RET.)

DEPUTY DIRECTOR

CENTER FOR DEFENSE INFORMATION

TO THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

9 MAY 1986

Mr. Chairman. I appreciate your invitation to testify on the resolution to approve the Compact of Free Association (CFA) between the United States and Palau. While many Americans have never heard of Palau, I think that the issues raised by the CFA should be of concern to all Americans--issues such as the United States' commitment to the principles of democracy and self-determination, the U.S. military's "anti-nuclear phobia," and its penchant for overstating its needs and planning for every conceivable "contingency" no matter how unlikely and no matter what the political and economic costs may be.

During my 37 years in the U.S. Navy and subsequent five years as Deputy Director of the Center for Defense Information I have carefully considered American military strategy, plans, operations, and requirements in the Pacific region. Two things are clear to me: one, the most important American objective in negotiating the Compact has been to insure continued and complete freedom for the U.S. military in Palau; and, two, Palau is militarily insignificant to the United States. In particular, there is absolutely no need for any type of U.S. nuclear weapons activity in or around Palau. This is true in peacetime and will also be true in wartime.

It appears to me that the United States, through political pressures, economic enticements, and legal maneuverings, has pushed on Palau a Compact of Free Association which is contrary to Palau's constitution and not in the best long-term interests of Palau or the United States.

It is way past time for termination of the United Nations-approved "Strategic Trusteeship" status for Palau, but that

termination is supposed to result in political independence and economic self-sufficiency for Palau. Instead, this Compact at best creates a "semi-sovereign" state that is still obligated to subjugate its interests to the U.S. military. Sovereignty in domestic and foreign affairs is simply not possible in the framework of total submission to the United States military. For its part, the United States is subordinating its commitment to fundamental principles of justice, self-determination, and democracy in order to protect perceived military interests that, in truth, make no sense.

The people of Palau have on many occasions indicated their desire to be "freely associated" with the United States, but the sticking point has been that the people want just as much to be a nuclear-free nation. The U.S. Government has insisted that the people of Palau cannot have it both ways. After years of trying at considerable cost to get Palau to change its non-nuclear constitution and to accept a "nuclearized" CFA, the United States appears finally to have developed a way to bypass the constitutional proscriptions against nuclear weapons.

Section 324 of the CFA states that "the Government of the United States has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau." This is perhaps the most objectionable of several military clauses in the CFA which undermine Palau's sovereignty and independence.

It is time to question U.S. insistence on the hoary

subterfuge of "neither confirming nor denying the presence or absence of nuclear weapons" in U.S. warships. First, it should be appreciated that this formulation was developed to meet the political needs of friends and allies who did not want to address the nuclear weapon question for their own domestic political reasons. It was not, and is not, related to U.S. national security considerations. In fact, it is contrary to our interest in deterring nuclear war. Deterrence requires that our adversary be convinced that we have the nuclear strength to deal devastating retaliatory strikes if we are attacked first. To create and sustain this perception we should be ready and willing to assert that every nuclear capable warship is fully armed and ready for nuclear operations against hostile forces. Creating doubts on this score can only weaken deterrence. It is paradoxical that we now insist on a fiction that was developed for the political benefit of our friends and allies even in situations where it is in conflict with the wishes of friendly nations and contrary to our own security interests.

The United States has no need to operate nuclear ships and planes in or around Palau in peacetime or wartime, now or in the future. A prohibition by Palau would in no way impair the efficiency or effectiveness of U.S. armed forces to carry out missions in Asia or elsewhere.

Why did the U.S. Government insist on that clause? Not because of any current requirement--the U.S. at present has no military facilities in Palau and the presence of any U.S. military ship or aircraft would be highly unusual. Instead, the Pentagon is concerned about potential future contingencies.

What does the U.S. military have planned for Palau's future? Pentagon officials have stated that they have no specific plans at this time, but want to keep options open. Some have said that the U.S. sees Palau as a potential forward base for Trident ballistic missile submarines. I have seen no evidence of such a desire, and I can assure this committee that a costly Trident base in Palau makes no military or economic sense.

DoD officials have in recent years referred to Palau as part of a "fall-back line" if the U.S. loses its military facilities elsewhere in Asia--meaning the Philippines. Palau has been mentioned as a possible site for storage of ammunition and supplies and as a possible site for resupply and repair of visiting ships and aircraft. The possible use of airfields (yet to be built) in Palau for support of anti-submarine patrol aircraft has specifically been mentioned. Palau would, however, be a very poor substitute--even a partial substitute which is all that would be physically possible. Because there is virtually no military infrastructure on Palau at present, the costs would be exorbitant. Moreover, there is a very small labor force, and an almost non-existent skilled labor force, in Palau. It is also more distant from operations in the South China Sea and the Indian Ocean. The extreme sensitivity of the Palauan people to nuclear-armed and -powered ships and planes could create serious problems as well, since the great majority of ships and aircraft which operate out of the Philippines are nuclear-capable.

While the U.S. specifically agreed not to store nuclear weapons in Palau--a DoD official recently told the House Interior

Public Lands Subcommittee, "This there is no need to do, even if our contingency basing options should be exercised"--if U.S. ships begin regularly visiting Palau the difference would be largely semantic. About 85% of U.S. Navy warships are equipped to carry and employ nuclear weapons, and it is my experience that all U.S. warships which are capable of carrying nuclear weapons, do routinely carry nuclear weapons when deployed.

Palau has also been mentioned as a possible location for a jungle training center. Indeed, as long ago as 1972 the DoD first announced the possibility of using 32,000 acres--one-third the land mass of Palau--for that purpose. Such a center could be useful, though by no means essential or even convenient. It would not require violation of Palau's constitutional provision against nuclear weapons.

The nuclear clause has also been cited as necessary to allow the U.S. to defend Palau. A Pentagon official testified last month regarding Section 324 that "This broad provision...provides the United States with a degree of authority and operating rights fully sufficient for the discharge of its defense responsibility." But no threat to Palau exists requiring such a provision. There is no potential enemy with any capacity to initiate and sustain hostile operations in the region, which would require U.S. ships and aircraft to operate out of or in defense of Palau. The only nation in the world with the ability to project military power into the region is the United States of America. Perhaps in the next century the Soviet Union might create such a threat, in which case new conditions would undoubtedly generate new attitudes. In the meantime,

establishing a sound relationship based on equality and recognizing the legitimate desires and concerns of Palau should be far more important than giving priority to highly unlikely future contingencies.

It is interesting that the same Pentagon official also commented that "because of the...limitation regarding nuclear storage, the compact does not include an obligation to defend Palau as the United States and its citizens are defended."

As much as anything else, the U.S. is probably concerned about the setting of a precedent. The U.S. has developed an extreme "anti-nuclear phobia." For example, it has--quite needlessly and foolishly in my opinion--indicated that it may exclude New Zealand from the ANZUS alliance if it bars U.S. nuclear ships from port visits. Yet, other U.S. friends and allies have placed restrictions on the visit of U.S. warships. As Commander, Task Force 60, I well remember the first deployment of the USS NIMITZ, then our newest nuclear aircraft carrier. After an arrival visit at Tangiers, Morocco, during her entire six months in the Mediterranean in 1976 she was unable to enter port in any country other than Italy. Both Spain and France declined all requests for visits by nuclear-propelled ships. I believe French ports are still closed to all nuclear-propelled warships.

Palau should be entitled to exercise its right to be nuclear-free, especially since the U.S. can respect that right without detriment to our national security or military readiness. Palau is of no strategic importance to the United States. It is

not necessary for protection of the Sea Lines Of Communciation and it is not necessary for prosecution of a war with the Soviet Union. U.S. naval strategy now calls for taking the war to the U.S.S.R. and attempting to bottle up Soviet forces before they reach essential sea lanes. Any war with the Soviet Union will rapidly become a nuclear war and is certain to be over long before Palau can come into play.

It should be obvious to everyone that this Compact of Free Association does not create an independent, sovereign Palau. Palau cannot be judged independent when the Compact gives the United States full authority and responsibility for security and defense matters in or relating to Palau. It is true that Palau cannot defend itself, but it could enter into a bilateral treaty with the U.S., as did the Philippines, Japan and Korea. Palau cannot be judged independent when the U.S. can forbid access to Palau by other nations' armed forces, and can invite other nations' armed forces in without permission from the Palau government. Palau cannot be judged independent when it gives the United States a 50-year "contingency option" to develop and use military airfields, storage sites, a harbor and training area of its own choosing. Palau cannot be judged independent when it is required "to refrain from actions that the United States determines to be incompatible with United States security and defense authority."

In many respects, by agreeing to the general terms of the CFA, even while objecting to involvement with the U.S. military nuclear structure, the people of Palau have compromised their independence and sovereignty. Perhaps the people of Palau are

willing to pay that price for continued economic support and protection by the United States. The price the citizens do not want to pay, but which the United States has insisted on, is abandonment of their nuclear-free status.

If Palau is to have any hope of becoming an independent, sovereign nation in the eyes of the rest of the world, it must be allowed to fulfill its oft-stated desire to remain nuclear-free.

My recommendation, Mr. Chairman, is that you do not approve this Compact, and instead urge the Administration to drop the clause giving the U.S. the right to operate nuclear capable or nuclear propelled vessels and aircraft within Palau's jurisdiction. We would then be respecting the constitution of Palau, the independence of Palau, and the wishes of the people of Palau. We would not be compromising the national security interests of the United States and we would be reaffirming the traditional commitment of the United States to the rule of law and the right of all nations freely to determine their own form of government.

The CHAIRMAN. Ms. Bounds.

STATEMENT OF ELIZABETH BOUNDS, MICRONESIA COALITION

Ms. BOUNDS. Thank you, Mr. Chairman. I have submitted a longer statement, as you know, to the committee. So, I will just summarize the major points.

The CHAIRMAN. If you would do so, please. The entire statement will be made a part of the record.

Ms. BOUNDS. Thank you. My name is Elizabeth Bounds, and I am the director of the Micronesia Coalition, which is a coalition of U.S.-based religious groups, both Catholic and protestant. I should add that much of the evidence that I am presenting today in testimony comes from the recent trip of one of our members of Palau, accompanying a member of the World Council of Churches.

I guess before commenting in more particular on the plebiscite and the compact, I want to say a word of our understanding of free association. We understand the status of free association is an interim status in the process of self-determination, as defined by the United Nations, and this seems to also be a common understanding among Micronesians.

We have always supported, I should add, the right of Micronesians to choose free association as the sort of interim status. However, the compact, the specific document that sets the specific terms of free association between the United States and the Republic of Palau must be examined in light of, and must not be in contradiction with the minimum standards established by the United Nations. And, in particular, it must also create a stable and mutually beneficial relationship from both parties to the agreement.

As a first step in considering the February 21 plebiscite, we would like to offer some observations about the current situation in Palau as heard by our member during the visit last month. Traditional leaders were not unanimously in support of the compact.

The 10 high chiefs of Palau, acting in their capacity as a council of chiefs, took only a formal position requesting President Salii to sign the compact. This position was not a judgment on the compact, but a call for the President to bring the compact out of the private realm of negotiation and into the realm of public debate.

The governors of Palau, individually, campaigned both for and against the compact. As part of the political education campaign, they appointed Governor Moses Uludong, a member of the political education team. The opposition among the governors was significant enough that the Palau administration sent a veiled threat to one of the governors, and we have submitted that as attachment A.

I simply would quote from the letter that President Salii wrote to Governor Uludong, "It has been recommended to me that one basis for distribution of compact funds should be the stand of each state or governor on the compact."

This letter could have influenced not only the particular governor to whom it was written, but also all the governors and states.

Next, there are three points that we would like to raise that indicate the questionable nature of the plebiscite. The first point concerns the ambiguity of section 324. There are, as I have noted earlier in this discussion, two provisions in the Palauan Constitution

pertaining to nuclear and other toxic materials. We have submitted those in attachment E of our testimony.

As you can see from reading them through, section 324 of the compact follows exactly the language of article 2, section 3 of the constitution. However, article 13, section 6 also pertains to nuclear and toxic materials, giving a broader definition of what is to be banned.

I note that section 324 must also fall within the limits established by the second clause of the Constitution; if the compact could be approved by a simple majority vote.

We look now at the language of both compact and constitution and raise some questions. A first question would be the definition of "operate." Would the operation of "nuclear-capable or nuclear-propelled vessels and aircraft" mean the presence of a nuclear powerplant as an engine which would be in conflict with article 13, section 6 of the constitution?

Would a ship, either nuclear-powered or containing nuclear weapons that was docketed in Palau be in transit, or would it be considered to be actually storing nuclear material, which would be in violation of the constitution?

We also ask, then, how broadly "operate" may be defined in the compact section 324, and how narrowly "use" may be defined in the provisions of the Palauan Constitution.

We add that the intention of the constitutional convention and the popular understanding in Palau seems to be that the constitution completely bans the presence of nuclear material.

We also raise in our testimony questions about possible ambiguity in the phrase, "within the jurisdiction of Palau," as a term that is not specifically defined anywhere in the compact or the subsidiary agreement.

In all the questions that we raise we are not claiming there are clear answers. Instead, our concern is potential ambiguities in defining certain key words for interpreting section 324, according to the Palauan constitutional requirements.

I would like also to submit—I have also submitted previously as written testimony, the testimony of Anne Simon, a lawyer for the Center for Constitutional Rights; the testimony that she presented yesterday before Congressman Solarz on the Subcommittee on Asian-Pacific Affairs in the House of Representatives. And I commend that—we are not lawyers, so I commend her interpretation as a lawyer to your attention.

I also would like to submit for the record a report from the Congressional Research Service, which was issued I believe yesterday and I would be happy to submit that at the end of this hearing, that was a legal analysis by the Congressional Research Service on this section 324. I commend that to your particular attention as also a legal opinion, which we, ourselves, cannot offer.

The ambiguities that we are concerned with stand out even more sharply when we consider how they were treated in the parts of the political education process. I will draw your attention to attachment C of our testimony, "Common Questions," a political education document issued by the Palauan Government.

Under question 2, you will note that it is assumed that the compact will require 75 percent for approval, with reference given to

article 13, section 6 of the constitution. You will note, also, that this 75-percent approval requirement is explained as resting solely on the point that the United States ships run on nuclear fuel, and the author does not point out to the Palauan people that not only nuclear-powered ships, but ships carrying nuclear weapons are permitted under section 324.

I would ask you to look, too, at attachment E of our testimony, a petition to the Palauan Government made by Palauans living in the Portland, OR area. They assert that as a part of what they deem a short and inadequate process of political education, they were told that there were no nuclear provisions in the compact.

To sum up the concerns of the coalition on section 324, we think there is a strong possibility that 75 percent voter approval was needed to approve section 324, and that we further feel it is unclear whether the Palauan people were adequately informed of the nature and implications of this provision.

I next would like to just touch on a few further problems—possible problems—in the political education process that raise the question whether the plebiscite was an adequate process for determining the will of the people.

I point here to a letter that our coalition sent February 12, 1986, to the U. S. Trusteeship Council, when they were considering their visiting mission to the Palau plebiscite.

In that letter, we noted that the compact had been signed only 6 weeks before the scheduled plebiscite and that as of the end of January in 1986, Palauans had told us that they had not yet seen the compact, even though they had sought it.

I note also, again from the petition of Palauans living in the Portland area, that they said, and I quote,

> That we had no copies of the Compact prior to the education meeting, even though at least one person had requested it more than a month before from the Palauan representative's office in Washington, D.C.

And, also,

> The education meeting was only a few hours long which was too brief to discuss many of the issues. Also, the representatives were not prepared to speak on many of the issues in the compact which concerned us.

I then would ask you to review carefully some of the attachments that we have submitted with our testimony. Attachment D is listing of revisions incorporated into the January 10, 1986, approved compact. This piece had limited distribution in Palau and was the basis for the education of the political education team.

Another piece distributed by the administration that I have already referred to, called "Common Questions." I would ask you on the basis of these documents whether you, yourself, would feel that you might be able to make an informed decision on the next 50 years of your political status.

I note that in the listings document there were a number of misstatements and omissions. In the discussion of the controversial section 324, it mentions only ships running on nuclear fuel that will be allowed, and the full reading of 324 also includes the operation of nuclear-capable aircraft and vessels.

In the Common Questions document, exaggerated figures are presented for the compact benefit, if you look at question 12. Question

19, dealing with the future of Palau if the compact is not approved, makes no reference to any possible, ultimate poltical status.

In question 4, eminent domain is discussed, but neither the constitutional limits nor the extent of U.S. power to appropriate land under the compact, title 3, is mentioned.

Referring again to question 2 in common questions, we would like to emphasize that many Palauans believed they were voting on a document that required 75 percent. We introduce here a petition, addressed to the U.S. Congress, and the U.S. Trusteeship Committee, that was sent yesterday morning, so I could not submit it with the full testimony, from Palau.

I would like to read you this very brief petition. "We, the undersigned, as leaders in the Palauan community . . ."

The CHAIRMAN. I have read it. It is a part of your testimony.

Ms. BOUNDS. OK, very good. I would just also finally like to refer to the possibility of admitted government pressure, Palauan Government pressure on the political education committee to take a totally procompact stance, and I would ask you in that regard to read carefully attachment A, the letter from President Salii to Governor Uludong.

The CHAIRMAN. I have already read it.

Ms. BOUNDS. OK. In conclusion, I will say that the Micronesian Coalition recognizes that the compact is, of course, a compromise, and that Palauan and United States negotiators have made a good faith effort over many years to come to agreement.

In our statement, we have tried to point to specific features of the compact and the education process which suggests that this compromise may be inherently unstable. In the past, the U. S. Government has expressed desire for a 75-percent majority vote.

This majority would clearly and unambiguously alter the Constitution of Palau, giving both the United States and the Palauan Government the authority to implement the compact. But the compact did not receive 75 percent of the vote cast on February 21 of this year.

Given the ambiguities and varieties of understandings of the nuclear and land-related issues of the compact, we foresee a potential problem. There is a strong possibility that implementation of this compact could place the Government of the Republic of Palau in a situation of being caught between the demands of the compact and the obligations of the Constitution.

A further complication is that the OEK, the Palauan Legislature, included a severability clause in their legislation authorizing the plebiscite and approving the compact. This clause reads, and I quote, "Severability. In the event that any provision of the approved compact for Free Association of this act shall be held unenforceable, void, unconstitutional or improperly ratified, the remainder of the provisions shall remain in full force and effect."

In the event of a court challenge to the implementation of the compact, the Supreme Court of Palau may rule that certain provisions of the compact are unconstitutional.

According to Palau law, it would appear that these provisions could be severed from the document allowing an additional point of instability. Both these scenarios would leave the government of Palau caught between pressure from domestic, legal and constitu-

tional requirements, on the one hand, and responsibilities under the compact on the other.

Finally, I would like to offer a few recommendations to this committee. First, we note the request in the OEK's authorizing legislation for the compact, the request to the U.S. Congress to amend sections 452 and 453(a) so that the compact will completely terminate after 15 years, rather than continue indefinitely.

We believe this request clarifies the interim status of the free association.

Second, we hope that this committee takes leadership in initiating careful study of the provisions of the compact, which could be causes of instability in the future relationships between the Republic of Palau and the United States.

Third, we support the petition of the Palauans of Portland who request the United States to conduct an audit of the expenses related to the conduct of both the education campaign and the plebiscite.

Fourth, we urge this body to secure copies of the statements submitted before other committees of the Congress, by Palauan voters, and before the United Nations' Trusteeship Council this month.

Finally, we would like to express our appreciation to your conscientious time and effort in reviewing the situation of the people of Palau.

Thank you for allowing us the time, and I will be happy to answer any questions.

[The prepared statement of Ms. Bounds follows:]

STATEMENT SUBMITTED BY MS. ELIZABETH BOUNDS

ON BEHALF OF THE MICRONESIA COALITION

IN THE HEARING BEFORE

THE ENERGY AND NATURAL RESOURCES COMMITTEE

OF

THE U.S. SENATE

WASHINGTON, D.C.

MAY 9, 1986

ON

THE COMPACT OF FREE ASSOCIATION FOR PALAU

S.J. RES. 325

Mr. Chairman and members of the Committee, thank you for allowing us this opportunity to testify at this important hearing on the Compact of Free Association between the United States and the Republic of Palau. We appreciate the time you have taken to review the details of this agreement.

I speak today on behalf of U.S.-based religious groups, both Catholic and Protestant, whose experience is informed by a history of active involvement and relationships in Micronesia and the Pacific. I should add that much of the evidence presented in this testimony comes from the recent trip of one of our members to Palau accompanying a representative of the World Council of Churches. Since the visit came almost immediately after the plebiscite, they were able to hear a variety of views about the recent events.

Today, we will present a statement covering a variety of issues that we consider important to your deliberations. The backdrop of our statement is contained in brief comments on the role of free association as a step in the process of self-determination. We will offer some consideration of the general mood in Palau around the time of the Compact and then move into specific discussion of both the provisions of the Compact and the process of political education. Finally we will offer some conclusions and recommendations which address the specific questions the committee has set before us.

I. FREE ASSOCIATION AS A STEP WITHIN THE PROCESS OF SELF-DETERMINATION

To begin our statement we would like to say a word about the status of Free Association itself. We undestand the status of Free Association as an interim status in the process of self determination as defined by the United Nations. This also seems to be a common understanding among Micronesians. This interim period provides an opportinity for further development and self-reliance or the possibility of cultural and political absorption into the United States.

Free Association has been defined by United Nations General Assembly resolution 1541, and has precedent in international law and practice. The rights established for Freely Associated States (FAS) by the United Nations present a necessary minimum definition of the status for a FAS. We support the right of Micronesians to choose free association as an interim status. The specific agreement, such as the Compact, which incorporates the terms of Free Association should offer a beneficial, stable agreement for both parties.

The Compact as a specific document setting forth the terms

of Free Association between the United States and the Republic of Palau must be examined in light of, and must not be in contradiction with the minimum standard set by the United Nations. Particularly, while the UN asserts that Free Association gives the FAS the right of unilateral termination, the Compact provides only limited unilateral termination on the part of the future Freely Associated States (FAS). We will note in our recommendations the clarifiing position taken by the Olbiil Era Kelulau (Palau's national legislature). As others have testified extensively on this point before the UN Trusteeship Council, we would urge this body to secure and review those statements.

II. THE SITUATION OF PALAU WITH RESPECT TO THE RECENT PLEBISCITE

As the first step in considering the February 21th plebiscite, we would like to offer some observations about the current situation in Palau as we heard it from Palauans during the weeks of political education and during our visit. We suggest that the picture, presented by the United States Administration, of a ground swell in Palau in support of the latest Compact may not have been an accurate one.

Traditional Leaders were not unanimously in support of the Compact. The ten high chiefs of Palau acting in their capacity as the council of Chiefs only took a formal position to request President Salii to sign the Compact. Their position was not a judgement on the Compact, but a call for the President to bring the Compact out of the private realm of negotiation and into the realm of public debate. Further, the Ibedul (Palau's highest chief and head of the Council) did not campaign for the Compact, and though asked, he would not appear on TV before the Palauan people to urge their consent to the Compact.

The Governors of Palau, individually, campaigned both for and

against the Compact. As part of the Political Education Campaign they appointed Governor Moses Uludong a member of the Political Education team. The opposition among the Governors was significant enough that the Palau Administration sent a veiled threat to one of the Governors. We submit a letter dated February 21, 1986 from President Salii to Governor Uludong (Attatchment A). In this letter President Salii writes,

> "It has been recommended to me that one basis for distribution of Compact funds should be the stand of each state or governors on the Compact."

This letter could have influenced not only the particular Governor to whom it was written, but also all the Governors and states.

Even our visit to and discussions with the people and voters of Belau did not reveal the kind of enthusiasm and new spirit that we had heard reported in the United States. Considering the number of votes against the Compact, we observe that in the 1986 plebiscite only 146 fewer voters cast NO votes compared with those who voted NO in 1984. And of those who voted YES, all told us that due to the current dependent status of Palau, they felt they simply had no choice. This, then, is the atmosphere in which Palauans participated in the plebiscite.

III. 1986 PLEBISCITE RESULTS INCONCLUSIVE AT BEST

We would now turn directly to the February 21, 1986 plebiscite and we would raise with you what we believe are some critical questions.

There are three major points which we would like to raise to indicate the questionable nature of the plebiscite. First is the ambiguity and potential unconstitutionality of the nuclear-related provisions of the Compact. Second, are shortcomings in the process of conducting the education campaign

and the plebiscite. Third, is the inadequeate nature of the political education campaign.

A. AMBIGUITY OF THE NUCLEAR PROVISIONS OF THE COMPACT SECTION 324

As this committee knows, Section 324 (concerning the presence of nuclear and other toxic materials in Palau) and its predecessors have been central to to the long process of voting and re-voting that has marked the history of both the Compact and the Constitution in Palau. The controversy has arisen from the relation of the Compact to the two sections of the Palauan Constitution banning the presence of nuclear and other hazardous materials from Palauan land and water except by the express approval of no less than 3/4ths of the Palauan people in a referendum on the section.

From the beginning of the negotiations between Palau and the US, different US administrations have understood this freely-expressed constitutional wish of the Palauan people to be in conflict with US defense requirements in the region. A 1982 US press release states that if the Palauan people declare their land, air and sea space nuclear free, "they may not also have a relationship of free association with the United States." Two previous votes on the earlier versions of the Compact have included separate questions on the Compact provisions related to this issue. However, it will be remembered, these did not receive the 75% of votes cast needed to conform to the relevant Constitutional provisions. No separate question was included on the ballot in the 21 February 1986 vote, since it was claimed that Section 324 was in conformity with the relevant portions of the Constitution. (I will note later that in public education before the actual vote, the Paluan government may not have made this point clear).

Given the importance of this provision in the development of the Compact of Free Association, I would like to consider whether it is indeed in conformity with the Palauan Constitution, or whether a 75% vote might have been required to approve this Compact as for the previous ones. We will also ask whether the Palauan people were adequately informed about the implications of the provision before they voted on the Compact. In this discussion, we do not offer legal exactness, but simply point to some ambiguities in the provision itself, and the political education process surrounding it.

A first point to raise comes from the wording of Section 324 in relation to the Palauan Constitution. There are two provisions in the Belauan Constitution pertaining to nuclear and other toxic materials (See Attachment B, excerpt of Constitution). As you can see from reading them through, Section 324 follows exactly the language of Article II, Section 3 of the Constitution. However, Article XIII, Section 6 also refers to nuclear materials, giving a broader definition of what is to be banned: not only "weapons intended for use in warfare" but "Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom". I note that Section 324 must also fall within the limits established by this second clause of the Constitution if the Compact could be approved by a simple majority vote.

Since the first half of Section 324 implicitly states that the Section is in conformity with at least one provision of the Constitution, attention must be given to the second half. This states,

> "The government of the United States has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the

jurisdiction of Palau."

Linking the two provisions implies that any activities granted by Palau to the US in the second half cannot conflict with the constitutional rights recognized by the US in the first half of the Section.

With this assumption, we can look at the language of both Compact and Constitution. A first question to be raised would be the definition of "operate". Would the operation of "nuclear capable or nuclear-propelled vessels and aircraft" mean the presence of a nuclear power plant as an engine which would be in conflict with Article XIII, Section 6? Would a ship, either nuclear-powered or containing nuclear weapons, that was docked in Palau be "in transit?" Or would it be considered to be actually storing nuclear material which would be in violation of the Constitution?

Another question to be asked is how broadly "operate" may be defined in the Compact Section 324, and how narrowly "use" may be defined in the provisions of the Palauan Constitution. Activities considered as "operating" by US standards could include transit or war exercises. Yet, the "use" contemplated in the provisions of the Palauan Constitution may well be more than merely the detonation of weapons. The intention of the Constitutional Convention and the popular understanding in Palau seems to be that the Constitution completely bans the prescence of nuclear materials. We note further that "use" in current US deterrence and defense policy can mean the mere presence of weapons. A perceived conflict of interpretation would be of great concern to Palauans and the US in entering into a fifty year agreement.

Another question about Section 324 is possible ambiguity in the phrase, "within the jurisdiction of Palau", a term that is not specifically defined anywhere in the Compact or the Subsidiary Agreements. Under Sections 321 and 322 of the CFA and

their accompanying agreements, the US may have "exclusive use" and exercise "unrestricted control" over pieces of Palau. Will these areas still be considered "within the jurisdiction of Palau"?

A related question concerns whether or not "Palau" in the Constitution (Art 1. Sec. 1) is identical with "Palau" in the Compact. The Constitution claims archipelagic rights while the Compact (Art. 1, Sec. 1 of the Agreement on Territories and Resources) states that Palau "shall not claim an archipelago or a regime of archipelagic waters." The difference in claims raises questions about the application of the Constitutional provisions to those waters claimed by the Constitution, but not the Compact. Would a 75% vote be required to allow the US under Section 324 to introduce nuclear and other toxic materials into these waters?

In all of these questions raised, we are not claiming that there are clear answers. Instead, we see potential ambiguities in defining certain key words for interpreting Section 324 according to Palauan Constitutional requirements. In spite of the definitions, within the body of the Compact, of many important terms, there are no definitions or limitations of the words discussed here. Members of the committee may wish to pursue some of these definitions with representatives of the US Administration and with the President of Palau who we are fortunate to have here with us today.

The ambiguities described here stand out even more sharply when we consider how they were treated in the parts of the political education process that we have submitted as evidence to this committee. I will first draw your attention to Common Questions (Attatchment C), a political education document issued by the Palauan government. Under question 2, you will note that it is assumed that the Compact will require 75% for approval with reference given to Article XIII, Section 6 of the Constitution. You will note that this 75% approval requirement is explained as

resting solely on the point that US ships run on nuclear fuel have "nuclear power plants" and are banned in the Constitution. The author of Common Questions does not, however, point out to the Palauan people that not only nuclear powered ships, but ships carrying nuclear weapons are permitted under Section 324. It is not mentioned that the US policy of neither confirming or denying the presence of nuclear materials on ships will be used in relation to the presence of nuclear weapons in Belau.

I will next consider the LISTING OF REVISIONS INCORPORATED INTO THE JANUARY 10, 1986 IMPROVED COMPACT (Attachment D), a document used in the education process which describes the revisions in the Compact. You will notice that in describing Section 324, this document says that, "The section does grant the United States the right to maneuver ships, run on nuclear fuel, through Palau's jurisdiction pursuant to Article XIII, Section 6, of the Palauan Constitution." As in the example cited above, stress is put on nuclear-powered ships, leaving the question of the presence of nuclear weapons untouched. Palauan voters might have wanted to hear about their possible proximity to nuclear weaponry.

Finally, I would ask you to look at a petition to the Palauan government made by Palauans living in the Portland, Oregon area (Attachment E). They assert that as part of the short and inadequate political education they received, they were told that there were "no nuclear provisions" in the Compact. All of this evidence from the process of political eduction for the plebiscite suggests that the only activity permitted the US is the transit of nuclear powered vessels. This omission in education becomes more serious, since, after a "neither confirm nor deny" policy is in place, Palauans will not be able to determine whether there are nuclear weapons on the crafts in question.

To sum up the concerns of the coalition on Section 324, we

think there is a stong possibility that 75% voter approval was needed to approve Section 324. Further, it is unclear whether the Palauan people were adequately informed of the nature and implications of this provision. We would ask this subcommittee to consider carefully the evidence presented on these important and difficult questions.

B. VERIFIABLE PROCEDURAL SHORTCOMINGS OF THE POLITICAL EDUCATION & PLEBISCITE PROCESSES

Here we would describe several procedural errors which are verifiable. These shortcomings raise the question that the plebiscite was a less than adequate process for determining the will of the people.

We foresaw some potential problems and raised such questions to the United Nations observer mission during their work in Palau, but see no evidence that the shortcomings were rectified prior to the plebiscite. We quote here from our letter dated 12 February, 1986, to the United Nations Trusteeship Council regarding the upcoming observer mission to the Belau plebiscite.

> "1. The Compact of Free Association between the United States Government (USG) and the Republic of Palau was signed in Palau on January 10, 1986, only six weeks before the scheduled plebiscite.
>
> "2. As of January 27, 1986, Palauans in Palau have told us that they have not seen the Compact, even though they have sought it. Less than one month before the plebiscite date there was neither an English nor a Palauan language version of the Compact available to the general public."

Later, in Palau we were told that copies of the Compact were scarce and the translation was not available until a week prior to the plebiscite.

We also submit for the record, a petition signed by 27

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Palauans living in the Portland area (Attatchment E). Their comments about the conduct of the plebiscite and education process include:

"...we had no copies of the Compact prior to the education meeting even though at least one person had requested it more than a month before for the Palauan Representative's Offive in Washington, D.C. ..."

"...the education meeting was only a few hour long which was too brief to discuss many of the issues. Also the representatives were not prepared to speak on many of the issues in the Compact which concerned us."

"After the political education we were not given time to study it since we were required to cast our ballots one day after the meeting."

C. INADEQUATE CONTENT OF THE POLITICAL EDUCATION CAMPAIGN

We have already submitted to you two documents that represent the Government of Palau's education campaign materials. First, is a piece entitled LISTING OF REVISIONS INCORPORATED INTO THE JANUARY 10, 1986 IMPROVED COMPACT (7 pages, Attatchment D). This piece had limited distribution in Palau and was the basis for education of the political education teams. Another piece distributed by the Administration was entitled COMMON QUESTIONS (3 pages, Attatchment C). Please review these documents, and determine for yourself whether you would be able to make an informed decision on the next fifty years of your political status based on these documents, even granted that the Education Committee had some hours of training in addition to these documents.

In Listings revisions are indicated. The information is listed by sections, and because some sections are listed simply as "no change" the only way to use this document is to read it

with a copy of the old Compact in one hand and the revisions in the other. There appears to be no reference to which past version of the Compact this list of revisions is comparing itself, but one must assume that it is the Compact that was not ratified in the September 4, 1984 plebiscite.

This is the most comprehensive document we could find on the Compact. Yet there were a number of mistatements and omissions in the Listings. In the discussion of the controversial section 324 it mentions that only "ships run on nuclear fuel" will be allowed when the full reading of 324 allows the "operation" of "nuclear capable" aricraft and vessels as well as nuclear powered craft.

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In Common Questions, future economic and political status is discussed. Exaggerated figures are presented for the Compact benefits, claiming the Compact to be worth $2.3 to 3.6 billion, in Question 12. Question 19 dealing with the future of Belau if the Compact is not approved, makes no reference to any possible alternate political status and merely expresses that Belau can do nothing but await the next US offer to negotiate. There is also no mention of the possible future of Belau following the transitional stage of Free Association.

On issues of land use and military options there are three questions raised. Eminent domain is discussed, but neither the Constitutional limits nor the extent of US power to appropriate land under the Compact is mentioned. Rather, Question 4 emphasizes the just compensation for lands taken. Further, Question 13 states that under the Trusteeship system the US has "full rights including use, test, or store nuclear weapons and take land without compensation." The implication of Question 13 in light of the other statements raised, particularly Question 4,

is that the US does have similar full rights under the Compact. Question 2 reinforces that view, stating that the only reason 75% voter approval is needed to ratify the Compact is to allow for the prescence of nuclear powered ships. There is no mention of the operation of nuclear capable crafts.

We would just like to emphasize that many Palauans believed they were voting on a document that required 75%. Their understanding is significant to the determination of whether this plebiscite, gaining only 72% is an adequate determination of the will of the people.

These objections are not just inconsistencies that we alone have detected, but issues that Palauans have also raised. We again point to the petition of Palauans from Portland (Attatchment E) which indicates that voters felt they were misinformed by the political education process.

> "...some of the information given us was misleading. For example, in the education meeting we were told that there were no nuclear provisions in the Compact....The representatives also told us that Belau could terminate the Compact at any time which is also misleading because we have found ... Sections 451-454 guarentee the U.S. certain military rights for 50 years even if the Compact is terminated."

2. QUESTION OF THE BIAS OF THE EDUCATION COMMITTEE

We again refer to the letter dated February 21, 1986, from President Salii to Governor Uludong (Attatchment A). Besides the suggestion of coersion to which we have already alluded, this letter also suggests that members of the education committee were expected to support the ratification of the Comapct rather than explain the rights and responsibilities of Palau under the Compact in an unbiased manner. In this letter President Salii

writes,

> "It has been reported to me that...as a member of the Political Education Committee you campaigned against the Compact. This surprised me since I had understood you to be now a supporter and it was on this basis that the governors nominated you for the Committee. ..."

Also, we point out the petition of Palauans from Portland (Attatchment E) indicates that voters saw the bias of the education committee.

> "...we feel the political education was biased. The representatives from Belau gave a pro-compact presentation in which they talked mainly about the benefits of the financial settlement and the immigration policy..."

IV. CONCLUSIONS

Throughout our history, we of the Micronesia Coalition have committed ourselves to support the self-determination of the peoples of the Trust Territory of the Pacific Islands. We recognize that the Compact is a compromise and that Palauan and U.S. negotiators have made a good faith effort over many years to come to agreement. In our statement we have pointed to specific features of the Compact and the education process which suggest this compromise may be inherently unstable.

We note that the provisions involving land use, the introduction of nuclear and hazardous materials in Belau, and cooperation with third party militaries in nuclear-related exercises, are questions that in the past have lead the US Government to express its desire for a 75% majority vote. This majority would clearly and unambiguously alter the Constitution of Palau give both the US and the Palau Government the authority

to implement the Compact. But, the Compact did not receive 75% of the votes cast on February 21, 1986.

Given the ambiguities and variety of understandings of the nuclear and land related issues in the Compact, we foresee a potential problem. There is a strong possibility that implementation of this Compact could place the Government of the Republic of Palau in the situation of being caught between the demands of the Compact and the obligations of the Constitution.

A further forseeable complication is that the Olbiil Era Kelulau (Palau's Legislature) included a severability clause in Republic of Palau Public Law 2-14, the legislation authorizing the plebiscite and approving the Compact. Section 6 states:

> "Severability. In the event that any provision of the Improved Compact of Free Association of this Act shall be held unenforceable, void, unconstitutional or improperly ratified, the remainder of the provisions whall remain in full force and effect."

In the event of a court challenge to the implementation of the Compact, the Supreme Court of Palau may rule that certain provisions of the Compact are unconstitutional. According to Palau law it would appear that those provisions could be severed from the document allowing an additional point of instability of the Compact.

Both these scenarios would leave the Government of Palau caught between irreconciable pressures of domestic legal and constitutional requirements on the one hand and responsibilities under the Compact on the other. This situation would be intolerable, and it is not a conflict of interest that the US should knowingly create for the emerging Palauan government.

V. RECOMMENDATIONS

First, we would highlight the efforts of the Olbiil Era

Kelulau to limit some of the oustanding and ambiguous language of the Compact through Republic of Palau Public Law 2-14, Section 2, Legislative Findings. Particularly, we note the request to the US Congress to amend Sections 452 and 453(a) so that the Compact will completely terminate after fifty years, rather than continue indefinitely. This request clarifies the interim status of free association, promoting a more stable framework for Palau/U.S. relations.

Second, we suggest that this Committee take leadership in initating study of the provisions of the Comapct which we have identified to be potential causes of instability in the future relationship between the Republic of Belau and the United States.

Third, we support the petition of the Palauans in Portland who request the United States to conduct an audit of the expenses related to the conduct of both the education camapaign and the plebiscite.

Fourth, we urge this body to secure copies of the statments of Palauan voters presented before other committees of the Coungress and before the United Nations Trusteeship Council this month. We ugre you to take their views seriously, as they have no representative voice in the Administering Authority.

Finally, we would like to express our appreciation to this committee for the conscientious time and effort you have put into review of the situation of the people of Belau. We thank you for allowing us this time to dialogue with you and will be happy to answer any questions. end.

MICRONESIA COALITION TESTIMONY
ATTACHMENT A

REPUBLIC of PALAU
Office of the President

Lazarus E. Salii
President

P.O. Box 100, Koror, Palau 96940
Phone: 829/403 Telex: 728-8914

February 21, 1986
Serial: 139

Governor Moses Uludong
Ngchesar State
Republic of Palau
#96940

Dear Governor Uludong:

It has been reported to me that during your trip to Guam and the FSM states as a member of the Political Education Committee you campaigned against the Compact. This surprised me since I had understood you to be now a supporter and it was on this basis that the governors nominated you for the Committee. It was certainly on the basis of my conviction that you would abide by the legislative mandate for the Committee that I accepted the nomination of the governors.

I bring this matter up simply to give you an opportunity to set the record straight if you care to do so.

It has been recommended to me that one basis for distribution of Compact funds should be the stand of each state or governors on the Compact. If you cared to comment on this, I would appreciate hearing from you.

Sincerely yours,

Lazarus E. Salii
President

MICRONESIA COALITION TESTIMONY
ATTACHMENT B

Appendix B: Belau Constitution

Pertinent excerpts from the Constitution of the Republic of the Palau (emphasis added).

PREAMBLE

In exercising our inherent sovereignty, we the people of Palau proclaim and reaffirm our immemorial right to be supreme in these islands of Palau, our homeland. We renew our dedication to preserve and enhance our traditional heritage, our national identity and our respect for peace, freedom, and justice for all mankind. In establishing this Constitution of the sovereign Republic of Palau, we venture into the future with full reliance on our own efforts and the divine guidance of Almighty God.

ARTICLE I: TERRITORY

SECTION 1. **Palau shall have jurisdiction and sovereignty over its territory which shall consist of all of the islands of the Palauan archipelago, the internal waters,** the territorial waters, extending to two hundred (200) nautical miles from a straight archipelagic baseline, the seabed, subsoil, water column, insular shelves, and airspace over land and water unless otherwise limited by international treaty obligations assumed by Palau. (. . .)

ARTICLE II: SOVEREIGNTY AND SUPREMACY

SECTION 2. **Any law, act of government, or agreement** to which a government of Palau is a party, **shall not conflict with this Constitution** and shall be invalid to the extent of such conflict.

SECTION 3. **Major governmental powers** including but not limited to defense, security, or foreign affairs **may be delegated by treaty, compact, or other agreement between the sovereign Republic of Palau and another sovereign nation** or international organization, provided such treaty, compact or agreement shall be approved by not less than two thirds (2/3) of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose, provided, that any such agreement which authorizes use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require approval of not less than three-fourths (3/4) of the votes cast in such referendum.

ARTICLE XIII: GENERAL PROVISIONS

SECTION 6. **Harmful substances** such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, **shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau** without the express approval of not less than three-fourths (3/4) of the votes cast in a referendum submitted on this specific question.

SECTION 7. The national government shall have the power to take property for public use upon payment of just compensation. The state government shall have the power to take private property for public use upon payment of just compensation. No property shall be taken by the national government without prior consultation with the government of the state in which the property is located. **This power shall not be used for the benefit of a foreign entity.** This power shall be used sparingly and only as a final resort after all means of good faith negotiation with the land owner have been exhausted.

ARTICLE XIV: AMENDMENTS

SECTION 1. An amendment to this Constitution may be proposed by a Constitutional Convention (called by a majority of a popular vote)*, popular initiative (25% of registered voters sign a petition)*, or by the Olbiil Era Kelulau (a resolution adopted by 3/4 of the members of each house)*. (. . .)

SECTION 2. A proposed amendment to this Constitution shall become effective when approved in the next regular general election by a majority of the votes cast on that amendment and in not less that three-fourths (3/4) of the states.

ARTICLE XV: TRANSITION

SECTION 11. Any amendment to this Constitution proposed for the purpose of avoiding inconsistency with the Compact of Free Association shall require approval by a majority of the votes cast on that amendment and in not less than three-fourths (3/4) of the states. Such amendment shall remain in effect only as long as the inconsistency continues.

*Author's explanation.

Republic of Palau

MICRONESIA COALITION TESTIMONY
ATTACHMENT C

COMMON QUESTIONS

1. What does the improved compact say about WW II War claims?
Nothing. This is a separate issue awaiting certification that the Japanese have paid War Claims before the U.S. can legally pay War Claims.

2. Why is 75% voter approval of the improved Compact required?
Although the U.S. agrees not to use, test or store nuclear weapons in Palau, they have ships whose engines run on nuclear fuel which fall within the definition of nuclear power plants. Article XIII Section 6 of the Palau Constitution requires 75% voter approval for nuclear powered ships in Palau's waters. Only a court could decide that less than 75% is required.

3. What was the basis for the $9.5 million in Section 213?
This was a best guess contained in both prior compacts. Two new sections have allow further adjustment of this amount, both Section 231 b and 432.

4. Please explain Eminent Domain.
This is a Constitutional process for the Government of Palau to take private land for the public benefit with just compensation.

Under the improved compact the Palau Constitution will be used to take private land and provide just compensation. The amount of compensation will be decided by a Palauan Court and paid by the U.S.

The improved Compact does not change Palau's law.

5. Are there any environmental controls on the U.S.?
Yes, the U.S. must comply with and apply its own environmental laws until Palau can adopt acceptable environmental laws. This includes U.S. military activities.

6. What controls will there be on the U.S. military people in Palau?
The Status of Forces subsidiary agreement is a complete plan to address this very issue.

7. What is the timetable for Compact approval?

U.S. Budget Hearings	Feb. 7-20, 1986
Palau Plebiscite	February 21, 1986
Palau Vote Certification	March 15, 1986
U.S. Congress approval	March 16 - June 15, 1986
U.N. Trusteeship Termination	September 1, 1986
Palau National Dev. Plan	Prior to October 1, 1986
Compact Implementation	October 1, 1986

8. What will happen if the Compact fails?
Palau will be the last U.N. Trusteeship on earth and will remain in this status until the U.S. is convinced to open further negotiations.

9. Please explain the road project in Section 212a.
The U.S. will build a road system for Palau within 5 years of Compact implementation. This does not mean that the U.S. will pay for previous roads built by someone else.

10. Is there direct State Government funding in the improved Compact?
No. The Palau Constitution requires all monies received to go into the National Treasury subject to OEK appropriation. State funding is a local issue, not a Compact issue.

11. Why are there separate subsidiary agreements?
The subsidiary agreements are the instructions on how to implement the general provisions of the Compact. They must be interpreted consistently with the Compact or changed to be consistent. This is required in the Compact, Section 462

12. Is Trusteeship funding for Palau more or less than improved Compact funding?
Trusteeship -- 7 year estimate $600 million
Improved Compact -- 50 year estimate $2.3 - 3.6 billion

13. What are the U.S. military rights in Palau under Trusteeship?
Full rights including use, test or store nuclear and take land without compensation. The Palau Constitution does not control the U.N. Trustee.

14. Can Palau break diplomatic relations with the U.S. if the U.S. fails to comply with the Compact?

Yes. The Compact can be terminated and Palau keeps all money received, including the Trust Fund.

15. Who pays for IPSECO?
Palau. There is no Compact money specifically set aside for IPSECO. However, there are continuing negotiations on this matter.

16. How do we resolve inconsistencies between the Compact, Zeder's letters and the subsidiary agreements?
The improved Compact is the contract. Zeder's letters are a binding interpretation of the Improved Compact. The subsidiary agreements only implement the Compact, they can not change, alter or redefine the Compact. The subsidiary agreements are easily changed to properly implement the Compact.

17. Who enforces Palau's 200 mile economic zone?
Palau protects its own 200 mile economic zone from poachers. This is a local police action of the Palau Coast Guard.

The U.S. defends Palau from acts of war.

18. Can laws be adopted to require U.S. service men to support children they father in Palau?

Yes

19. What are the biggest differences between Trusteeship and the improved Compact?

	Trusteeship	Compact
a.	U.S. makes decision for Palau.	Palau is a sovereign Nation and makes its own decisions.
b.	Full U.S. military rights including nuclear	Full military rights but nuclear transit only.
c.	$600 million support - 50 years.	$2.3 - $3.6 billion support in 50 years.
d.	3 mile seward jurisdiction	200 mile economic zone.
e.	U.S. permission for all Palau laws and contracts.	No. U.S. permission for Palau laws, contracts or anything else.

MICRONESIA COALITION TESTIMONY
ATTACHMENT D

LISTING OF REVISIONS INCORPORATED INTO THE JANUARY 10, 1986 IMPROVED COMPACT

(1) PREAMBLE

A fifth preambular paragraph has been added in recognition of both the United States and Palau's mutual desire to terminate the current UN trusteeship status and establish a new form of political relationship between the two countries based upon self-determination and the freely expressed wishes of the people of Palau.

TITLE ONE - GOVERNMENT RELATIONS

ARTICLE I - SELF-GOVERNMENT (No Change)

ARTICLE II - FOREIGN AFFAIRS

(2) Section 121 has been broken into subsections (a) and (b) to provide for the United States' recognition of Palau's inherent competence and capacity to enter into, in its own name and right, any international or regional treaties or conventions and for Palau to confirm it will dispense its treaty obligations in accordance with the principles of international law as well as to settle its international disputes by peaceful means.

(3) Section 123. In addition for the United States to consult with Palau in conducting its foreign affairs that may affect Palau, the United States will also provide Palau on regular basis all information on its regional foreign policy matters.

(4) Section 128 is a new section obligating the United States to extent to Palau, upon consent of a receiving state, any consular assistance on the same basis as those accorded the Federated States of Micronesia and the Republic of the Marshall Islands.

ARTICLE III - COMMUNICATIONS

(5) Section 131 has been amended into two subsections (a) and (b) to provide for an option to Palau to assume the authority for notifying the International Frequency Registration Board of the radio frequency assignments used by radio broadcasting stations in Palau, and that until Palau makes this choice, the notification authority resides with the United States as provided for under a separate subsidiary agreement on communications.

ARTICLE IV - IMMIGRATION

(6) Section 142(a). A new sentence has been added to the end of this subsection recognizing Palau's right to regulate occupations in Palau in non-discriminatory manner.

ARTICLE V - REPRESENTATION (No Change)

ARTICLE VI - ENVIRONMENTAL PROTECTION

(7) Section 163 is a new section clarifying environmental standards to be complied with by the United States or Palau governments in any project undertaken by either government in Palau. Additionally, the President of the United States may exempt any US sponsored activity in Palau from the requirements of Article VI with prior consultation with the government of Palau and to report to the government of Palau his reasons for exemption.

ARTICLE VII - GENERAL LEGAL PROVISIONS

(8) Section 174(d). A new sentence has been added to this subsection to clarify that reciprocal waiver of sovereign immunity by both the governments of the United States and Palau from the jurisdiction of the court of the other are those actions sounded on commercial activities into or injuries or losses suffered on or after the Compact has gone into effect.

TITLE TWO - ECONOMIC RELATIONS

ARTICLE I - GRANT ASSISTANCE

(9) Section 211(a) This Section has been amended to provide for the United States to contribute an additional $5 million dollars per year for the first four years of the Compact to Palau's current operating account. This constitutes a 20 million dollar increase in direct United States funding to Palau. This results in a 20 million dollar retention in the 211F Trust Fund which will result in a significant increase in the interest income over the fifty year term of the Compact.

(10) Section 211(b) This Section has been amended to provide that five hundred thousand dollars of the annual 2 million contribution for energy shall be devoted to those parts of Palau not served by the central power generating facility. This assures energy funding for the outer islands.

(11) Section 211(d) Specific amounts originally referred to under paragraphs (1), (2) and (3) have been deleted and thus leaving the Republic of Palau the option to allocate annually the sum of $631,000, as it sees fit, to maritime surveillance and enforcement; health and medical programs, including referral cases, and scholarships for college and university education.

(12) Section 211(f). This Section has been amended to (1) increase the initial investment fund from $60,000,000 to $70,000,000; (2) broaden the scope of permissible investments; (3) exempt the income from United States income taxes; (4) provide a mechanism to adjust the fund principal, permissible investments and distribution based upon adverse performance of the fund.

(13) Section 212(a). This section has been amended to broaden the scope of the road system from Babeldaob Island to all of Palau.

(14) Section 221(b)(2). This is a new section adding 8.67 million dollars contribution from the United States to Palau to be used for educational purposes.

(15) Section 231(b). This is a new section which provides for an annual review of Palau's economic circumstances. Palau is granted the right to seek additional funding from the United States Congress in any year during which Palau experiences any exceptional, economical adverse circumstances.

ARTICLE II - PROGRAM ASSISTANCE (No change)

ARTICLE III - ADMINISTRATIVE PROVISIONS

(16) Section 234. Personal property of the United States Government situated in Palau upon the effective date of the Compact shall be exempt from transfer to Palau.

ARTICLE IV - TRADE

(17) Section 241. The trade provisions found in Section 241 and 242 are a result of legislation imposed by the United States Congress on the FSM and Marshalls Compacts. These trade provisions recognize Palau as a sovereign nation and give Palau equal treatment with other sovereign nations. Palau received an additional 10 million dollar contribution to the 211F Trust Fund as a set off against any benefits lost from the revision of these trade provisions.

(18) Section 243. (Please see comments to No. (17).)

ARTICLE V - FINANCE AND TAXATION

(19) Section 254. (Please see comments to No. (17).)

(20) Section 255. (Please see comments to No. (17).)

(21) Section 256. (Please see comments to No. (17).)

TITLE THREE - SECURITY AND DEFENSE RELATIONS

ARTICLE I - TRADE (No Change)

ARTICLE II - DEFENSE SITES AND OPERATING RIGHTS (No Change)

ARTICLE III - DEFENSE TREATIES AND INTERNATIONAL SECURITY AGREEMENTS

(22) Section 324. This is a new section wherein the United States agrees not to use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare within Palau's jurisdiction, in compliance with Article II, Section 3 of Palau's Constitution. The section does grant the United States the right to maneuver ships, run on nuclear fuel, through Palau's jurisdiction pursuant to Article XIII Section 6 of Palau's Constitution.

ARTICLE IV - SERVICE IN THE ARMED FORCES OF THE UNITED STATES (No change)

ARTICLE V - GENERAL PROVISIONS

(23) Section 351. Additional subsections have been added hereto to (a) specifically empowering the joint committee to consider dispute arising under Title Three of the Compact; (b) joint committee membership consists of senior officials of each government with the US military commander in the Pacific as US committee member, and (c) for the joint committee to hold semi-annually. Additionally, the joint committee is required to meet promptly at the request of either party and that government of Palau be given an opportunity to have audience personally with the US Secretary of Defense on disputes unresolved by the joint committee.

(24) Section 352. A new sentence has been added for both governments to recognize that the exercise of the United States defense and security authority and responsibility under the Compact is for mutual security and benefit of both countries and that any attack, or threat thereof, on Palau is a threat to the peace and security of the Pacific region as well as to the United States. In such an event, the United States shall take action necessary and in accordance with its constitutional process to avert the danger to the United States and Palau.

(25) Section 353 is a new section providing that the United States, without Palau's consent, shall not include Palau as a party to its formal declaration of war on a third party, and that, absent Palau's consent, claims or petitions of government or citizens of Palau for damages or redress arising out of armed conflicts subsequent to the effective date of the Compact, shall not be prejudiced and shall be treated "as if they were made by citizens of the United States."

TITLE FOUR - GENERAL PROVISIONS

ARTICLE I - APPROVAL AND EFFECTIVE DATE

(26) Section 422(b) has been changed to read "Approval by the people of Palau in a referendum called on the Compact" and any reference to requisite percentage of vote to approve the Compact has been omitted.

ARTICLE II - CONFERENCE AND DISPUTE RESOLUTION

(27) Section 424(b) has been amended to include Title One, Article VI on Environmental Protection, within the jurisdiction of the arbitration board.

ARTICLE III - AMENDMENT AND REVIEW

(28) Section 431 is being clarified that the Compact can be amended by mutual consent of the United States and Palau according the respective constitutional processes of either government.

(29) Section 432 has been changed to provide for formal review of the terms of the Compact and its associated subsidiary agreements, as well as the overall nature of free association relationship, on the 15th, 30th and the 40th anniversaries of the effective date of the Compact. Both governments shall consider the operating requirements of Palau as well as Palau's progress in achieving the objectives set forth under the national development plan to commit themselves to take remedial and specific actions per the findings and conclusions of the formal review.

ARTICLE IV - TERMINATION (No Change)

ARTICLE V - SURVIVABILITY

(30) Section 453(c) has been added reaffirming the United States Government's continuing interest in the promotion of long-term economic advancement and self-sufficiency of the people of Palau.

(30) Section 454 is a new section providing that construction and implementation of any Compact provision which survives after Compact, termination shall be the same as those when the Compact was in effect.

ARTICLE VI - DEFINITION OF TERMS

(31) Section 461(c) new language has been added herein clarifying that the definition of "Palau" is consistent with the intent of the Compact and its subsidiary agreements and thus taking into account the present or future differences in United States policies with respect to Palau's maritime jurisdictional claims.

(31) Section 462 new language has been added herein to ensure that implementation and interpretation of the subsidiary agreements shall be the same or consistence with the provisions of the Compact itself.

ARTICLE VII - CONCLUDING PROVISIONS

(32) Section 471(b) contains a new provision to the effect that the laws, regulations or administrative procedures of both the governments of the United States and Palau are such that they effectuate the commitments of either government under the Compact rather than holding the same to strictly conform with the provisions of the Compact.

SUBSIDIARY AGREEMENT - 211F TRUST FUND

(33) Article V, Section 3 of the 211F Trust Fund Subsidiary Agreement has been added to provide for five year reviews of the performance of the Trust Fund and an agreement to resolve any lack of adequate performance of the fund as anticipated.

LETTERS OF DIPLOMATIC EXCHANGE

On November 27, 1985 Ambassador Fred M. Zeder III provided five diplomatic letters of exchange to the Honorable President Lazarus E. Salii, President of the Republic of Palau, which letters of exchange are legally binding interpretations of various provisions of the Improved Compact of Free Association.

(34) Letter regarding United States Congressional add on benefits. The United States Executive Branch previously oppose certain add on benefits and programs proposed by the United States Congress to the FSM and Marshalls Compact. This letter assures Palau that the United States Executive Branch will not oppose United States Congressional add on programs for the Palau Compact.

(35) Foreign Affairs. This letter assures Palau that the United States Executive Branch will undertake to supply the Government of Palau with the public portions of any foreign affairs report dealing with the Pacific Basin.

(36) Palau National Development Bank. This letter assures Palau that the Palau National Development Bank may be amended at anytime by the Government of Palau and that such amendments are not subject to the concurrence of the United States Government, although the original plan must be approved by the United States Government.

(37) Palau's two hundred miles jurisdiction. This letter assures Palau that the United States will recognize Palau's two hundred miles economic zone and will not do anything inconsistent with Palau's exercise of jurisdiction within the two hundred economic zone, except that the United States requires highly migratory fish† to be regulated pursuant to a regional management plan.

(38) COMPACT TO BE UNDERTAKEN IN GOOD FAITH. This letter assures Palau that the United States will undertake all all of its obligations under the Compact in "good faith." Although the Compact does not have a good faith provision, this letter explains international law requiring good faith in all international agreements and restate the United States intent to comply with this provision of international law.

* binding on U.S. under ... as Letter from Secretary (not binding on regional ...)
4 Sec 611 3(B)

** not in CFA to avoid precedent of Libya, Chile, ...

† tuna ... Since Palau is in regional fisheries regime, 200 M applies ...

SENATE BILL NO. 2-116

The Senate and House of Delegates of the Second Olbiil Era Kelulau unanimously approved the Improved Compact of Free Association.

The Olbiil Era Kelulau also established a Board of Trustees to oversee the investment of all grants in aid through the 211F Trust Fund. This independent body will advise the President on prudent investments which must then be approved by the Olbiil Era Kelulau before the President actually invests the funds.

All appropriation from the 211F Trust Fund must be approved by the Olbiil Era Kelulau.

This procedure will greatly enhance the productivity of the fund and secure a broaden base of input from throughout Palau.

SUMMARY

The thirty-three improvements to Palau's Compact have a two-fold benefit. First, they bring the Compact into conformity with Palau's Constitution and laws. Second, they assure Palau a sound economic basis for future growth and development along with a mechanism to seek additional economic assistance in the event that expectations are defeated due to unexpected circumstances beyond Palau's control.

The basic economic package provided for in the Improved Compact is $2.3 Billion. The effect of Senate Bill No. 2-116 is to effectively manage these funds in a manner that has the potential to increase them to $ Billion. Through sound economic policies and due regard for the benefits and responsibilities of sovereignty, Palau's future will be prosperous under the Improved Compact of Free Association.

MICRONESIA COALITION TESTIMONY
ATTACHMENT E

TO THE OBIIL ERA KELULUA (BELAU NATIONAL CONGRESS)

We, the undersigned Belauans (Palauans) living on the U.S. mainland, strongly feel that the political education process* for the revised Compact of Free Association did not give adequate time or information for the voters.

FURTHERMORE, the revised Compact required time and copies of the document to study and understand it, but we had no copies of the Compact prior to the education meeting even though at least one person had requested it more than a month before from the Palauan Representative's office in Washington, D.C. The education representatives sent from Belau had only about five copies with them to distribute among approximately 100 people in Portland. After the political education we were not given time to study it since we were required to cast our ballots one day after the meeting.

FURTHERMORE, the Compact was written in English and as far as we know has not been translated into Belauan language at all. This made it difficult for many of us to understand it.

FURTHERMORE, the education representatives were not scheduled to come to Portland although Portland has the largest Belauan population of any city on the U.S. mainland. They came to Portland on Feb. 14 only at the request of Portland Belauans and gave only a one day notice of the meeting. Many Belauans did not get notice of the meeting or were unable to attend.

FURTHERMORE, the education meeting was only a few hours long which was too brief to discuss many of the issues. Also the representatives were not prepared to speak on many of the issues in the Compact which concerned us.

*This political education which was legislated by the OEK (Belau Congress) allocated up to $325,000 of funds for education on the Compact prior to the February 21 plebiscite.

FURTHERMORE, we feel the political education was biased. The representatives from Belau gave a pro-Compact presentation in which they talked mainly about the benefits of the financial settlement and the immigration policy under the Compact.

FURTHERMORE, some of the information given us was misleading. For example, in the education meeting we were told that there were no nuclear provisions in the Compact but afterwards we found that Section 324 states that "...the Government of Palau assures the Government of the U.S. that...it has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons..."

The representatives also told us that Belau could terminate the Compact at any time which is also misleading because we have found under Section 443 of the Compact that it allows Belau to terminate the Compact by a plebiscite, but Sections 451-454 guarantee the U.S. certain military rights for 50 years even if the Compact is terminated.

FURTHERMORE, the Belau Election Committee reported only 184 absentee ballots from the U.S. mainland although there are approximately 1500 Belauans living in this country. We believe this is because many Belauans were not contacted about the political education or voting and that a number of cities with large Belauan populations were not visited by the education and plebiscite representatives. Other Belauans have reported not having enough information on the Compact to vote. It is evident that the lack of absentee balloting meant that many Belauans were unable to exercise their right to vote.

IN CONCLUSION, many of our concerns about the political education must have affected not only other Belauans in the U.S. but those in Belau also.

THEREFORE, WE REQUEST an audit of the appropriation for the political education on how the money was spent, done by the Congress of Balau and by the appropriate agency of the U.S. government.

WE ALSO REQUEST that the Congress of Belau investigate the education and absentee balloting process for this plebiscite and that this process be reorganized and improved for any future plebiscites.

cc: OEK (Congress of Belau) Plebiscite Committee
The Honorable Yutaka M. Gibbons, High Chief Ibedul and the Council of Chiefs
Senator Thomas Remengesau (Belau)
Representative Les AuCoin
Representative James Weaver
Senator Mark Hatfield
Representative Stephen Solarz
Representative Morris Udall
Senator Frank Murkowski
Senator Patrick Leahy
Representative John Seiberling
U.N. Trusteeship Council
The International League for Human Rights
Minority Rights Group (New York) Inc.
Pacific Conference of Churches
National Council of Churches
United Methodist Office for the U.N.

Signatures:

NAMES	ADDRESSES
① Hans Engelengel	1411 N. Alberta #7 Portland, OR
② Johnny Kintaro	2106 N.E BUFFALO PORTLAND, OR
③ Thomas Remengesau	6914 N. Philadelphia, PHLD, OR
④ Delphina Rehlumd	"
⑤ Fumiyasu Macayos	2108 N.E. Suffolk, Portland, Ore 97211
(6) Wilhelm Conti	650 [illegible] ave West haven, Ca. 95570
(7) Florencio Ngirmang	1411 N Alberta #1 Portland OR
(8) Eternal Gibbons	319 W. Main St. #2 Monmouth, OR 97361

Signatures:

	NAMES	ADDRESSES
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13.		Box 17283 Port. Oreg. 97217
14.		Box 1246 LaGrande, O. 97850
15.		4048 SE Holgate 97202
16.		1939 SE Tenino Port, OR 9720
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18.	Christina Collier	2106 NE Buffalo, Pld. OR 97211
19.	Henderson Fowne	1411 N. Alberta Apt #1 97217
20.	Wilma Mayekaboe	7568 S.W. Olesan Rd B. 97223
21.		
22.		9384 N. Lombard #3
23.	Virginia Blisek	" " " 97203
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Petition Signers - 4/22/86

1. Hans Ongelungel
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15. Ely Jonathan
16. Caleb Basiou
17. Mercy Haubert
18. Christina Collier
19. Henderson Temael
20. Wilma Majekobaje
21. Ruth Siliang
22. Frank Boisek
23. Virginia Boisek
24. Wiliana Remoket
25. Elebuchel Remoket
26. Augustino Augustine
27. Kalista Siliang

The CHAIRMAN. Thank you, very much. I have a couple of questions I would like to address to Ms. Bounds.

In your testimony, you suggest that Congress should not approve the compact because it may not be consistent with Palau's Constitution. However, the President of Palau, the Legislature of Palau and the attorney general of Palau have all certified that the compact is constitutional.

Is it appropriate for us to question Palau's interpretation of their own constitution.

Ms. BOUNDS. Well, I think in the petitions that we have submitted to you indicate that there certainly is a feeling in Palau that 75 percent may well have been required for the section 324 to be approved; that there is a possibility of potential conflict. I would think the Congress would need to examine carefully——

The CHAIRMAN. I assume we can find conflict in this country on any and every subject. Are we going to suggest to other countries that they question our own internal processes based upon the dissent of some in our own country?

Ms. BOUNDS. Another factor in the situation here is that this is not—the ambiguity of the nature of this agreement has marked, I would say, the whole negotiation process. The United States is still, of course, the trustee for the territory and I think that gives us a special responsibility in relation to the constitution.

The CHAIRMAN. To question their internal process?

Ms. BOUNDS. To examine very carefully.

The CHAIRMAN. And to question whether their own judgments of their own constitution are valid or whether we should preemptively interpret their constitution and apply our judgments to it?

Ms. BOUNDS. I also think that the Palauan courts——

The CHAIRMAN. Is that correct?

Ms. BOUNDS.—will be the——

The CHAIRMAN. I am sure that is true, but if the Palauan court disagrees, I suspect you would ask us to ignore them, too.

Ms. BOUNDS. No, I don't think so because the court, as I understand the constitution, is the final arbitrator.

The CHAIRMAN. Well, the court will make that determination. You are asking us to ignore the other instruments of their government and expressions of their government; why would you single out the court? Because they have not yet spoken?

Ms. BOUNDS. No.

The CHAIRMAN. And you still have hope that they will speak, right?

Ms. BOUNDS. No, because the court, as I understand the constitution, is the final arbitrator of these——

The CHAIRMAN. And according to their Constitution, the Governor is the spokesman for their government—the President is the spokesman for their government. You want us to ignore that.

Ms. BOUNDS. The President is also bound by the Constitution.

The CHAIRMAN. Surely. I understand that. You are a very good debater; you ignore the question and give the answer you would rather have to a question that was not asked.

Ms. BOUNDS. We are here to simply ask the Congress to consider carefully the potential ambiguity before approving a relationship that will last for 50 years.

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The CHAIRMAN. In your testimony, you also question the validity of the plebiscite under which the compact was approved by 72 percent of the vote. However, U.N. observers reported that the plebiscite was fair. Again, is it appropriate for us to question the judgment of the U.N. observer team, whose impartiality on this issue we have no reason to question?

Ms. BOUNDS. Well, I, myself, have not been able to see the final report because it was not available by the time I left New York. I will say from the understanding I have of the contents of that report, it is a far less laudatory than previous reports of the visiting missions of Palau and I understand at least one comment within the report is that the effectiveness of the political education can best be described as patchy.

I think there are some dissenting opinions that are contained within that report.

The CHAIRMAN. Again, dissenting opinions are easy to find. We can find dissenting opinions on every subject within the Congress of the United States. I do not believe we have to go across the country to find them, on almost any subject.

Admiral Carroll, your position, as I understand it, is that the United States does not have a military need to operate nuclear-powered or nuclear-capable vessels in Palau. Is this correct?

Admiral CARROLL. That is correct.

The CHAIRMAN. As a matter of broad policy, would it not be unwise to preclude this option, considering that we cannot be certain of future needs?

Admiral CARROLL. I tried to make the point that our classic formulation neither confirm nor deny the presence or absence of the weapons, is no longer militarily or politically valid.

It was originally developed to protect our friends and allies who did not want to address that question in their own domestic political process. So, we simply agreed that we would neither confirm nor deny. In terms of nuclear deterrents, however, we should be anxious to confirm and to affirm the capabilities of our forces to conduct nuclear warfare effectively if we are attacked.

The CHAIRMAN. You point out that many nations already prohibit visits by U.S. nuclear-capable and nuclear-powered vessels.

Admiral CARROLL. Not many, but here and there, yes.

The CHAIRMAN. Is it not in our interest to increase the areas of operation in the possible ports of call for U.S. naval vessels rather than limit them?

Admiral CARROLL. Not if it is in contradiction to the fully and freely expressed wishes of the people of those nations.

The CHAIRMAN. Well, I understand that. But in spite of that, or setting that aside, is it not as a matter of U.S. policy better for us to expand the areas in which our Navy is able to operate and make ports of call rather than restrict?

Admiral CARROLL. Within the scope of the strategy presented by the Secretary of the Navy and the Chief of Naval Operations to this Congress, it is really not essential because the phase 1, phase 2, phase 3 operations continuously close in on the Soviet Union.

The CHAIRMAN. Can I ask the question another way, then, if you do not want to answer that one? Do you believe it is good for the

security of the United States to have increasing limitations upon the operability of our Navy and the availability of ports of call?

Admiral CARROLL. No, not in principle, but in practice, we should be willing to lead an alliance of friends who share our objectives, share our values and who cooperate with us if their position is they do not wish to cooperate as, let's say, the nation of New Zealand, then I don't believe we have any option except to accept their freely expressed position.

The CHAIRMAN. And in this instance, the Government of Palau is telling us that their freely expressed condition is that it is not prohibited.

Admiral CARROLL. I am not a constitutional lawyer, and I agree quite fully that the question is going to be resolved apparently by the Palauan courts, but my primary argument is we should even put it to that test because it is not required for our security or for the security of Palau.

The CHAIRMAN. You do not object to the compact provision in which we undertake the obligation to provide security for Palau?

Admiral CARROLL. We provide a measure of security. There is testimony before the Congress that we do not agree to defend the Palauan nation in the same way we defend the allies who accept our conditions. We have conditioned our security guarantees to their positions.

The CHAIRMAN. But we have agreed under the compact, here and throughout Micronesia, to provide the security that is necessary for that area of the Pacific. Is that not correct? Do you find fault with that?

Would you rather that we just ignored the security requirements and left them on their own?

Admiral CARROLL. We are not ignoring their security requirements——

The CHAIRMAN. I did not ask you whether or not we were ignoring them. I am asking you if you would prefer that we did?

Admiral CARROLL. You are asking would you prefer to stop beating your wife. I mean, there is no yes-or-no answer to that question. It has to be put in context.

The CHAIRMAN. Is security of the Pacific and the islands in the Pacific, their security, of interest to the United States?

Admiral CARROLL. To the extent that they share a comparable view of security with us and we cooperate in that, yes; it is fine.

The CHAIRMAN. Assume that they had a different view of security than we did. Is it conceivable that their view of security might be different than ours in ways that would be damaging to our security?

Admiral CARROLL. Yes, and then I believe that we are not, as a republic and a believer in the integrity and the rule of law and the rights of nations, entitled to impose our definitions of security on them.

The CHAIRMAN. Were you concerned at all during the 1930's to see the fortification of some of the islands in Micronesia by the nation of Japan?

Admiral CARROLL. That is the point I made; the world has changed. We had an in-placed power in the Pacific which we had to

displace with military power and with tremendous cost--lives and so on.

The CHAIRMAN. I understand. Did that concern you?

Admiral CARROLL. That would concern me at this moment.

The CHAIRMAN. Would it concern you if some other nation were to move into Micronesia and start fortification?

Admiral CARROLL. Yes, and we have a provision in the treaty where we share with the Palauans the right to deny access.

The CHAIRMAN. And you like that provision?

Admiral CARROLL. I think it is a reasonable provision, provided it is freely entered into.

The CHAIRMAN. Do you think it is good for the United States to have that provision?

Admiral CARROLL. Yes, and the way we would execute that provision is not by operating in Palauan waters. We have a naval strategy which is quite different.

The CHAIRMAN. I understand that. I want to separate it for just a moment, and I will return to that. But, if I understand your statement, it would be a matter of concern to you if the Russian Navy were to go into the Truk Lagoon and establish a major mid-Pacific base.

Admiral CARROLL. Which they have no capability to do.

The CHAIRMAN. Well, I did not ask that question. Would it be of concern to you if they did?

Admiral CARROLL. Obviously, yes.

The CHAIRMAN. Would it be a threat to the security interests of the United States if they did?

Admiral CARROLL. In the longer term, yes; if it was part of a process.

The CHAIRMAN. Well, the establishment of a major base would be of concern to you, just as it was of concern to you during the 1930's when the Japanese starting doing that.

Admiral CARROLL. I feel like I am being cross examined by the prosecuting attorney, so to answer in that context, yes; of course. Any expansion of Soviety military——

The CHAIRMAN. You did not assume you were going to come up here and get a free statement, did you?

[General laughter.]

Admiral CARROLL. Not at all. I wanted to continue a dialog, though; not yes-and-no answers.

The CHAIRMAN. All right.

Admiral CARROLL. The Soviet Union simply is not capable of doing these things you are hypothesizing.

The CHAIRMAN. And 10 years ago, the Soviet Navy was incapable of blue-water activity. Is that correct?

Admiral CARROLL. And they are incapable of it now, Senator.

The CHAIRMAN. Except that they are all over the world operating.

Admiral CARROLL. That is not blue-water activity; that is naval presence, which is altogether different than the ability to sustain combat.

The CHAIRMAN. But, as a matter of fact—and it is a matter of fact, is it not—that it was predicted 15 or 20 years ago that the Russians would never do what they are doing today?

Admiral CARROLL. No, I certainly did not engage in any such discussion during my active duty.

The CHAIRMAN. I did not suggest that you did. But was that not a fact?

Admiral CARROLL. No, no. Not since 1962.

The CHAIRMAN. You do not think so? You think it was free anticipated 15 or 20 years ago that the Russians would today have a blue-water navy?

Admiral CARROLL. They do not have a blue-water navy. There is where we disagree.

The CHAIRMAN. You define it.

Admiral CARROLL. A blue-water navy is one that can go into the open seas and sustain combat operations, and they are missing three requirements for that capability.

The CHAIRMAN. And they will never have them?

Admiral CARROLL. I do not know that they will ever get them, but they don't have any signs of developing them in the way that has immediate relevance, or current relevance.

The CHAIRMAN. Did they, 15 or 20 or 45 years or 50 years ago have even the presence that they now have?

Admiral CARROLL. No; 1962 was the watershed when Gorschov became the driver of a modern navy for the Soviet Union.

The CHAIRMAN. And a modern navy means what?

Admiral CARROLL. Modern navy means ships having some of the capabilities of U. S. warships.

The CHAIRMAN. Some of the operability. What is one of the essential elements for a Russian Navy that would be capable of operating as you define a blue-water navy?

Admiral CARROLL. Three capabilities; they have to have the mobile logistics forces which will accompany the fleet and resupply it with munitions and fuel to sustain combat, as we did, say, off of Vietnam for weeks and months at a time.

They must have a base structure which suppo-ts such a logistic force, and finally they must have tactical air capabilities—air support—on scene. They are showing the first signs of an attack aircraft carrier now which is years away from any operational capability.

The CHAIRMAN. But less than 50 years?

Admiral CARROLL. That is correct.

The CHAIRMAN. Tactical air depends upon ground basing, too?

Admiral CARROLL. Yes, if you are talking about defensive capabilities. They have tactical air in the homeland of the Soviet Union.

The CHAIRMAN. The mobile requirements also are associated with the advance bases?

Admiral CARROLL. Yes, bases and ships.

The CHAIRMAN. Bases and ships. Now essential to every one of those three points you have made is land bases, ports, facilities; do not the islands in the Pacific provide the base for each one of those three requirements?

Admiral CARROLL. Well, you want me to answer a very narrow question. The strategy for defeating the Soviet Navy is set forth in the documents presented to this Congress by Secretary Lehman

and Admiral Watkins, and we intend to drive them back into their home waters and contain them there.

The CHAIRMAN. How are we going to do that?

Admiral CARROLL. With the forces that he has asked for in the 600-ship navy.

The CHAIRMAN. OK. So, we will fight them.

Admiral CARROLL. Yes.

The CHAIRMAN. Are we going to declare nuclear war if they establish an advance base in the Pacific?

Admiral CARROLL. No. We are going to exercise other measures of control of the situation, including use of tactical forces to defeat them.

The CHAIRMAN. We will fight them, though?

Admiral CARROLL. We will fight them on that scene, yes.

The CHAIRMAN. Does the Soviet use of Cam Ranh Bay concern you?

Admiral CARROLL. Of course it does. We built the base for military purposes. They are using it for military purposes. They can't sustain operations there.

The CHAIRMAN. Well, if they can't sustain operations there, I would just you are not concerned about it.

Admiral CARROLL. No, you are trying to put words in my mouth.

The CHAIRMAN. I am trying to understand you and I am having difficulty.

Admiral CARROLL. They have established a base which primarily gives them a presence in support of the Vietnamese Government.

The CHAIRMAN. But the presence in support of whatever purposes they have, the presence is troublesome to us?

Admiral CARROLL. Well, their presence in Afghanistan is very troublesome to us; I wish they weren't there.

The CHAIRMAN. Of Course. Their presence at Cameron Bay is troublesome to us.

Admiral CARROLL. In the sense that it gives them an immediate——

The CHAIRMAN. You would rather they were not there?

Admiral CARROLL. I would rather they were not there.

The CHAIRMAN. A Soviet military base in Micronesian Islands would be troublesome to us, even if it was not a blue-water navy.

Admiral CARROLL. I just refuse to answer that question in those terms, because they have no capability to establish the base.

The CHAIRMAN. Thank you, very much. I appreciate your testimony today. I recognize you have sincere points of view, as every citizen of this country is privileged to have. That is one of the great strengths of our country, is that every person has the right to have that point of view and I am not at all reluctant to provide you the opportunity to make that statement here today.

Admiral CARROLL. For which I am greatly appreciative.

The CHAIRMAN. There are no further witnesses to come before the Commission; the hearing will adjourn.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

June 13, 1986

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to enclose with this letter the Administration's written responses to the questions you forwarded to us after the Committee's May 9 hearing on SJR 325, the legislation approving the Compact of Free Association for Palau. We have provided responses to all the questions that were not asked and answered at the hearing and, in a few instances, augmented answers that were provided at the hearing.

In addition to these questions and answers, your Committee staff has identified the desirability of receiving, prior to Committee action on SJR 325, Administration views on several technical and interpretive points of the Palau Compact in comparison to similar provisions in the Marshall Islands and the Federated States of Micronesia. I am pleased to supply such views and information in this letter as well.

As we have discussed, one of the most noticeable outcomes of he extended negotiations between the U.S. and Palau since the Compact was first voted on in Palau in February 1983 has been the shortening and simplification of the terms of the Compact for Palau and the rendering of the Compact into a bilateral agreement. Many of the provisions of the Palau Compact will thus appear slightly different, oftentimes more abbreviated, from related provisions in the Compact for the Marshall Islands and the Federated States of Micronesia. These changes, which the Administration views for the most part as stylistic and as not altering the intention and meaning of the sections in question, were made in response to requests by the Palauan delegations to the negotiations.

Within this general context, the following information relating to specific sections, articles or issues is provided:

a. Section 123. The Palau Compact section on foreign policy consultations explicitly contemplates that the United States will regularly provide information to the Government of Palau concerning regional foreign policy activities and developments. For its part, the Administration agreed to this language since it had intended such information to be a part of the normal consultative process it envisioned would take place with Palau, and which it also envisions in its consultations with the governments of the other freely associated states.

b. Article IV, Title One, et seq. The Palau Compact uses the words "related" and "separate" interchangably as modifiers of the word "agreement" to denote agreements entered into between the United States and Palau in furtherance of the provisions of the Compact.

c. Section 151. This section of the Palau Compact does not refer explicitly to freely associated state government offices in the United States other than that office expected to be located in Washington, D.C., while Compact Section 151 for the other freely associated states does make explicit reference to such additional offices. Palau Compact Section 151, by such lack of reference, does not in any way limit Palau from establishing such other offices. In all cases, the establishment of such offices by the freely associated states would be accomplished in consultation with and with the agreement of the United States.

d. Article V, Title One. The Palau Compact does not contain the equivalent of Section 153 of the Compact for the Marshall Islands and the Federated States of Micronesia. That Section provides that U.S. citizen agents of the freely associated states need not comply with the foreign agents requirements of United States law, although Section 105(f) of P.L. 99-239 (the Compact of Free Association Act of 1985) limits the exemption to U.S. citizen employees of the freely associated state governments. It is the Administration's understanding that Palau is not now seeking the exemption provided by Section 153 of the Marshall Islands and FSM Compact and would accept, as an addition to the Palau Compact implementing legislation, the more limited exemption outlined in Section 105(f) of P.L. 99-239.

e. Article VI, Title One, generally; Section 163(a)(1). As a general matter, it should be noted that the central difference between the environmental protection provisions of the Palau Compact and those of the Marshall Islands and FSM Compact has to do with the method of enforcement for the undertakings of the United States Government with respect to the subject matter of the sections. In the Marshall Islands and FSM case, the United States has agreed to a narrow exception to the general Compact rule that closes the courts of the United States to the freely associated states and vice versa. Specifically, limited jurisdiction is granted to named courts for judicial review of certain United States undertakings under Article V, Title One.

Only the governments of the freely associated states would have standing to bring such actions. In the Palau case, the method for dispute resolution and enforcement of compliance with undertakings is the arbitration mechanism specified in Article II of Title Four of the Palau Compact. This change was made at the request of Palau; United States negotiators were willing to agree to judicial review provisions in the Palau Compact equivalent to those in the Marshall Islands and FSM Compact. In fact, such equivalent provisions were included in the Compact voted on in the February, 1983 Palau plebiscite.

Specifically with respect to Palau Compact Section 163(a)(1), the National Environmental Policy Act (NEPA) does not extend to Palau, or to U.S. Government actions in Palau. Rather, the provisions of NEPA which define a major federal action are imported into the Compact as a means of determining which U.S. actions in Palau will be subject to environmental standards substantively similar to those in effect in Palau under U.S. law on the day preceding the effective date of the Compact. In the Marshall Islands and FSM Compact, NEPA is made applicable explicitly. However, since NEPA is a procedural act only, the practical effect of its applicability is the same as in the Palau case, i.e. to provide a mechanism and definition for which actions are to be covered by the environmental standards the Compact specifies. I should finally note that the substance of the environmental standards in question in the Palau case is the same as in the case of the Marshall Islands and the Federated States of Micronesia.

f. Military civic action teams for Palau. The House Foreign Affairs Committee reported out the Palau Compact legislation (HJR 626) with an amendment authorizing the placement of United States military Civic Action Teams in Palau under conditions mutually agreed and set forth in appropriate agreements between Palau and the United States. In the view of the Administration, this amendment is the functional equivalent of Compact Section 227 for the Federated States of Micronesia and should be adopted.

g. Section 242(d). In this section, the words amount not to exceed 15 percent of the should be inserted immediately before the word "appraised". This is a technical amendment that the Administration believes necessary in order to make this section fully consistent with the provisions of Title IV of P.L. 99-239.

h. Section 321. This section, which provides that the United States Government may establish and use defense sites in Palau, and may designate land and water areas for this purpose, is analogous to Section 321 of the Marshall Islands and FSM Compact. That section, in Subsection 321(c), recites the recognition and respect of the United States Government for the scarcity and special importance of land in the Marshall islands and the FSM and specifies a United States policy of seeking only the minimum necessary interest in land and the minimum area

necessary to accomplish the required security and defense purpose. The fact that no such iteration and policy statement is included in the Palau Compact in no way indicates that the United States Government intends to pursue a different course in Palau. At the same time, the United States was willing to agree to the Palau request to remove from the Palau Compact language analogous to Section 321(c) of the Marshall Islands and FSM Compact.

i. Section 341. The Administration requests that a technical and corrective amendment be made in this section by deleting the words "Section 131" and inserting the words Section 141.

j. Sections 311 and 352. In the Palau Compact, the fact of the foreclosure of the territory of Palau to the military forces or for the military purposes of nations other than the United States is set forth in Section 311 which section remains in force until otherwise mutually agreed by the United States Government and the Government of Palau. The commitment of the United States to take action, in accordance with its constitutional processes, to meet the danger to Palau and the United States resulting from any hostile attack, or threat of attack, on Palau is linked to, and would continue coterminous with, the foreclosure of Palau.

k. Section 432. The Administration requests that a technical and corrective amendment be made in this section by removing the comma and inserting in lieu thereof the word and.

Finally, I have enclosed with this letter and in response to a request from the Committee, attachment "B" which sets forth additional information as respects the savings expected to accrue to the United States in outlays if the Compact is enacted and enters into force prior to October 1, 1986. Due to the inclusion of first year Palau Compact funding in the FY 1986 Urgent Supplemental Bill by the Senate Appropriations Committee, this analysis commences with and computes savings forward from FY 1987, the second year of Compact funding.

The Administration will be pleased to assist your Committee in any way possible as it considers the Compact of Free Association for Palau.

Sincerely,

Fred M. Zeder II
FCY Ambassador

Enclosures

bcc: Jim Beirne, Esq.

Attachment A.

Written Questions and Responses
Related to the May 9, 1986 Hearing by the
Committee on Energy and Natural Resources, United States Senate
On SJR 325, the Compact of Free Association for Palau

B1 What is the Administration's reaction to the Congressional Research Service American Law Division finding that if Section 324 of the Compact does in fact provide for any of the proscribed activities then the entire Compact requires a three-fourths approval, or, at the very least, that there be a special question thereon in the referendum that must be approved by three-fourths of the vote?

ANSWER: This statement by CRS is difficult to understand because it is not clear what is meant by the words "in fact," as used in the CRS analysis. If it means Section 324 actually authorizes the U.S. to do those acts it expressly has agreed not to do, then it is wrong. In light of Section 324 the U.S., in carrying out its defense responsibilities under the Compact, would not use, test, store or dispose of nuclear or other designated types of weapons in Palau. Thus, what Section 324 states on its face is exactly what it "in fact" means, and this provision authorizes none of those actions which require three-fourths approval under Article II, Section 3 of Palau's constitution.

If "in fact" refers to the possibility of a judicial decision in Palau's courts which establishes as a matter of Palauan law that the Compact authorizes an activity which requires three-fourths approval under Article II, Section 3 or any other provision of the constitution (including Article XIII, Section 6), the CRS has merely stated the obvious. For if, prior to the effective date of the Compact, the judicial branch of Palau's government adopts an interpretation of the constitution different than that of the political branches of the government, Palau will determine what further internal measures it may be required to take, in light of the particulars of any such court ruling, before it proceeds with Compact implementation. If such a ruling comes after the Compact is in effect, the Government of Palau will determine what measures may be taken to achieve compatibility between its obligations under the Compact and the provisions of its constitution. In either case, the referendum would be available as one possible means of resolving issues raised by a court decision.

Legitimate matters of constitutional interpretation are involved, and these issues have already been addressed by the duly constituted authorities of Palau. The Administration believes that these authorities have acted in a reasonable and responsible manner in interpreting their constitution, and has not attempted to look behind the policies of that government with respect to interpretation of Palau's constitution.

B2 If a suit is brought in Palau against the government for allowing the transit of U.S. ships that might contain nuclear weapons, and that suit is successful, what will be the impact on U.S. security interests?

ANSWER: An answer to this question depends upon the particulars of the ruling, when it is handed down and how the mandate of the court is carried out by the Government of Palau.

If the suit is decided prior to the effective date of the Compact and the Government of Palau is unable, in light of the court's ruling, to proceed with Compact implementation, the trusteeship would then continue for Palau until the matter is resolved. There would be no impact upon U.S. security interests as long as the trusteeship continues.

Once the Compact is in effect, any such ruling would apply to the Government of Palau. Any change in Palau's internal law or legal policy purporting to restrict U.S. defense rights as defined in the Compact would not be binding upon the U.S. It is anticipated that any such matter would be raised and resolved on a government-to-government basis in accordance with Title Three of the Compact, which provides for consultations and dispute resolution on all defense matters.

B3 Will the U.S. urge the Palauan government to seek a referendum on this issue under these circumstances? Should we ask the Palauan government to do this now?

ANSWER: Palau conducted a referendum on the Compact, including Section 324 which addresses this issue, on February 21, 1986. Unless a court in Palau determines that the President, Attorney General and National Congress of Palau misinterpreted their constitution in certifying that the matter had been resolved by this referendum, there is no basis upon which it properly could suggest to Palau that it conduct another vote. If a court decision makes it impossible for Palau to proceed with Compact implementation, determination of how such an internal legal matter will be resolved is the responsibility of the Government of Palau. The U.S. will certainly consult with the government on this matter.

B4 Did the United States government, in its educational campaigns concerning the Compact prior to its approval by Palau, discuss the meaning and intent of the nuclear weapons prohibitions in Palau's constitution?

ANSWER: The U.S. provided funding for, but did not conduct, educational program activities in connection with the referendum. This was done by the Palauan government. The position of the

U.S. on interpretation of Section 324 was a well-known matter of public record in Palau prior to the plebiscite.

B5 Section 324 was added to the Compact to resolve the conflict between the Palau Constitution and earlier versions of the Compact. Article II, Section 3, of the Palau Constitution requires a 75% vote of approval for agreements which authorize the "use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare." In Section 324 the United States specifically agrees not to "use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare." Is this a limitation on U.S. activities over the previous versions of the Compact and the Compact for the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) and would you comment on the extent of these limitations?

ANSWER: Other versions of the Compact defined U.S. defense authority and responsibility in a manner which would have provided for storage of designated types of weapons on a very precisely prescribed basis. Under Section 324 the U.S. will not have the option, in carrying out its defense role in Palau, to store such designated types of weapons in Palau.

B6 Would you please comment on the practical effects of a Palau court decision that may reinterpret this section of the Palau Compact to be in conflict with the Palau Constitution? That is, specifically how could U.S. operations be affected?

ANSWER: U.S. operations would not be affected by such a court ruling because Palauan law cannot unilaterally alter the terms of the Compact any more than U.S. law can unilaterally alter the terms of the Compact. Mutual consent is required to change the terms of the agreement. Changes in our respective internal laws may affect relations between the governments, but would not alter the legal obligations or rights of the governments under the Compact.

B7 How would such a situation, if it occurred, be resolved?

ANSWER: On a government-to-government basis in accordance with the dispute resolution provisions of Title Three of the Compact.

B8 Last week in a hearing before the Appropriations Subcommittee on Interior and Related Agencies, Assistant Secretary Montoya stated that the administration would have no objection to funding for the Palau Compact on the FY86 supplemental. This approach could, and I emphasize "could", provide funding for all Micronesian Compacts by July. However, I understand that the administration will request termination of the trusteeship from

the United Nations Trusteeship Council next week and the Security Council in July. Is this correct?

ANSWER: Yes, that timetable is consistent with our present intentions. The approach to the Trusteeship Council has, at this writing, already been made and the Trusteeship Council has passed a resolution recommending termination of the Trusteeship Agreement.

B9 Is the Administration planning to request funding for the Palau Compact in advance of enactment?

ANSWER: No, the Administration did not include an appropriations request for the Palau Compact in its FY 1986 supplemental or its FY 1987 regular request.

B10 Will the lack of enacted appropriations, or of an enacted Palau Compact, be factors considered by the Administration for possible delay in the request for termination?

ANSWER: These factors will be carefully considered. The Administration does not intend to delay termination of the trusteeship pending enactment of U.S. laws which will enable the U.S. to implement the Compact. Rather, the Administration will seek to provide for a termination date simultaneous with the effective date of the Compact. The latter date will not be prior to enactment of all U.S. legislation required to implement the Compact.

B11 How likely is it that the U.N. will wish to delay termination pending enactment of the Palau Compact and the appropriation of funds?

ANSWER: The question of enactment of U.S. implementing laws is not before the U.N. The U.N. will have cognizance of the question of self-determination. There are numerous precedents supporting the position that the governments concerned, and not the U.N., are responsible for internal measures required to carry out their obligations under the agreements which take effect upon termination of the trusteeship.

B12 What are your plans if the Security Council fails to approve termination?

ANSWER: The U.S. will seek termination of the trusteeship on the basis of valid acts of self-determination. The Security Council and the U.S. have a commitment to protect and advance the right of the people of the trust territory to self-determination. Thus, the Security Council would have no basis for attempting to prevent termination in accordance with the freely expressed wishes of the peoples concerned.

B13 Would you provide the Chairman of both Senate and House Appropriations Committees as well as this Committee and the relevant House authorizing Committees with letters from both the Department of the Interior and OMB confirming Assistant Secretary Montoya's statement and stating whether the Administration supports and desires an appropriation in FY86 for Palau concurrent with the request for the Federated States of Micronesia and the Republic of the Marshall Islands?

ANSWER: As of this writing, the Senate Appropriations Committee report on HR 4515, the 1986 Urgent Supplemental Bill, recommended the addition of first-year Palau Compact funding to that bill. As passed by the Senate on June 6, 1986, HR 4515 contained full first-year Palau Compact funding. The Administration interposed no objection to this action and will support it in the Urgent Supplemental Bill Conference. Thus, the Administration's position is already a matter of record.

B14 It is my understanding that Palau's Compact funding will total $417.5 million over fifteen years? How much would the U.S. spend in Palau over those fifteen years if the Compact were not enacted?

ANSWER: The United States outlay required by the terms of the Compact will be approximately $420 million. This is approximately $15 million less than the estimated cost ($435 million) of continuing Trust Territory grant and program assistance to Palau for the same period were there no Compact of Free Association. However, it must be remembered that the $420 million outlay for the Palau Compact includes $70 million for the Palau national trust, the primary purpose of which is to provide funding for years 16 through 50 of the relationship. When the amount of the national trust fund initial capitalization is deducted from the total U.S. outlay for the Palau Compact, the outlay savings to the United States during the first 15 years is approximately $85 million.

B15 Agencies have not yet been notified of their responsibilities under the Compacts to continue their services, grant eligibility and/or technical assistance. Until they are notified there will continue to be confusion regarding these services in Congress and Micronesia. When will all federal agencies be notified of their responsibilities under these Compacts?

ANSWER: The responsible departments and agencies of the Executive Branch are currently in active consultations on this matter, and significant progress has been made in preparing for Compact implementation. Organizational processes should be complete in July, and all concerned agencies will be notified of implementation procedures at that time.

B16 The Committee has received indications that federal agencies have been informed or are under the impression that they do not have to provide either program, grant, or technical assistance unless they are either reimbursed by the Office of Territories or are specifically instructed to do so in Appropriations Acts. Is this correct?

ANSWER: Answered in the Hearing (See Berg testimony).

B17 A review of the President's proposed FY87 budget indicates that again an effort has been made in the Labor-Health and Human Services appropriations request to eliminate assistance. Why has this been done?

ANSWER: Answered in the Hearing (See Berg testimony).

B18 What are the Administration's plans for establishing offices in the Freely Associated States? How many people will be stationed and from which federal agencies will they come?

ANSWER: The Administration intends to establish an Office for the United States Representative in the capitals of each of the freely associated states. The U.S. Representative will be appointed by the President (subject to Senate confirmation) and will be carried on State's personnel rolls. State will also provide a political/economic officer with consular experience and and administrative assistant position for each post. There will also be one administrative officer position located in the FSM but with responsibility for all three posts. It is expected that other federal agencies, including Commerce and Interior, will also provide personnel.

B19 Have there been requests from these agencies to OMB to fund these positions? If so, what is OMB's position?

ANSWER: Yes, in the case of the State positions.

B20 This Compact differs from the Compact approved for the FSM and RMI in several major aspects:

-- This Compact's term is longer (50 years, rather than fifteen).

-- Section 324 has been added to meet constitutional concern.

-- Tax, trade and offsetting compensation provisions of P.L. 99-239 have been included in the Compact before Congressional consideration.

-- The funding schedule is structured differently to allow for a one-time grant to the capital account. Current account payments are more specific and completion of a road system is provided for.

In addition, there appear to be many less significant changes to the document. Could you please comment generally on the nature of and reason for the following changes?

B20.1 The addition of Section 124(B) concerning Palau's jurisdiction over its territory.

ANSWER: Section 1 of Article I of Palau's constitution provides for definition of territorial limits by international agreement. To ensure constitutional compatibility, it was agreed to insert these provisions in the Compact itself, as well as the separate agreement on marine sovereignty.

B20.2 The deletion of Section 153 regarding registration of foreign agents.

ANSWER: The Government of Palau did not regard this provision as necessary for its employees.

B20.3 Modification of Section 172 regarding judicial review under the Freedom of Information and Administrative Procedure Act.

ANSWER: This provisions deleted from the previous version dealt with court actions to enforce the environmental provisions of Article VI. Article VI was revised to provide for arbitration under Article II of Title Four in lieu of court access. Thus, these provisions were not appropriate any longer.

B20.4 Modification of Title III, Article II regarding the designation of defense sites.

ANSWER: An effort was made to simplify defense site provisions to give both governments greater flexibility in the designation of sites to avoid land acquisition disputes.

B20.5 The deletion of definitions regarding telecommunications in Article VI.

ANSWER: It was the position of the governments that these definitions were not required in order to implement the provisions in which the previously defined words were used.

B20.6 The deletion of Section 463 regarding the force of U.S. laws.

ANSWER: The material addressed in Section 463 of the Compact of Free Association for the Marshall Islands and the Federated

States of Micronesia was considered unnecessary in the Palau Compact since it is the understanding of both Palau and the United States that any United States laws applied or extended to Palau by the Compact will apply or extend as they may be amended from time to time in a non-discriminatory manner by the United States.

B21 The Committee has received several resolutions from the Palau House of Delegates with the following requests, could you please comment on your position regarding these resolutions?

B21.1 That the U.S. distribute funds to complete the road-building projects agreed to in the Compact.

ANSWER: The Compact and the agreement subsidiary to Compact Section 212(a) provides for scheduled completion of this project. Funding to begin implementation of U.S. obligations under this section is included in the first year cost estimates for the Palau Compact provided by the Administration.

B21.2 That the U.S. recognize the reservations of the government of Palau and amend the Compact:

ANSWER: In general, these statements in the Palau legislation are unilateral declarations that are not binding upon the United States unless it otherwise agrees.

B21.3 Allow for compensation to states and landowners in the event the U.S. decides to build military bases in Palau.

ANSWER: The Compact provides funding to the Government of Palau for this purpose, and the Government of Palau is responsible for providing land in accordance with the terms of the Compact, and for providing any necessary compensation to states and land-owners.

B21.4 Allow citizens of Palau to receive federal and state assistance as if they were U.S. citizens while residing in the U.S.

ANSWER: Citizens of the Freely Associated States will be entitled to public services and benefits while residing in the U.S. on the same basis as aliens lawfully present in the U.S., subject to the terms of the Compact and applicable U.S. law. These benefits, even if not identical to those available to U.S. citizens, will be of great assistance to Palauans who take advantage of the special rights of residing, working and going to school in the U.S.

B21.5 Allow Palau students to receive post-secondary education federal assistance for the life of the Compact.

ANSWER: The Compact provides funds which the Government of Palau may use to establish scholarships programs for the attendance of Palauan citizens in United States institutions of higher learning. It also provides that those Palauan students receiving post-secondary assistance from the United States Government at the time of the effective date of the Compact will be able to complete their academic programs without interruption of such assistance.

B21.6 Allow for the extension of the Small Business Administration and the Farmers Home Administration to Palau.

ANSWER: If Congress extends the same levels of authority to these federal agencies in the Palau Compact legislation as it did in the Compact legislation for the Marshall Islands and the Federated States of Micronesia, this desire of the Palau National Congress will be met.

B21.7 Allow for the extension of Headnote 3(A) with the exception of watches, buttons, textiles and footwear.

ANSWER: The trade provisions of the Compact already meet this concern.

B21.8 That the U.S. extend post-secondary education financial assistance from 4 to 7 years.

ANSWER: The Compact economic assistance to be provided to Palau for current account purposes during the first fifteen year funding period of the Compact will provide Palau with more current account funding than Palau would have received under the present Trusteeship arrangement, including the costs of federal education programs. Thus, under the terms of the Compact, Palau will have more than sufficient resources to continue every federal education program, as well as other programs, if that is their choice. For the U.S. to continue these education programs without a commensurate reduction in Compact current account assistance would constitute double funding in this account.

B21.9 That the U.S. exempt Palau Compact funds from the Gramm-Rudman-Hollings deficit reduction law.

ANSWER: When enacting Public Law 99-177, Congress decided not to provide an explicit exemption from sequestration for the Compact of Free Association. The Administration sees no reason to alter that position, especially in light of the fact that most Compact funding is provided with a pledge of the full faith and credit of the United States and Palau is given appropriate judicial standing to enforce such pledge.

B21.10 That the U.S. continue funding for the Micronesian Occupational College outside of Compact funding.

ANSWER: Funding for this institution should be dedicated by the Government of Palau from available resources, including Compact funding, which the Administration believes to be more than sufficient to continue the present levels of support without necessitating program reductions in other areas.

B21.11 That U.S. Compact funding be provided retroactive to the beginning of fiscal year 1986.

ANSWER: The Administration supports this proposal and notes the provisions of the Senate enacted version of HR 4515, the FY 1986 Urgent Supplemental Bill, that would accomplish this result. The Administration does not believe that any such Compact funding should be paid to Palau until the effective date of the Compact.

B21.12 That the U.S. appropriate the $24.1 million of War Claims awards to Micronesian claimants.

ANSWER: The matter of war claims payments is not addressed in the Compact, but rather in U.S. legislation authorizing the appropriation of such funds after certain international conditions are met.

B22 Palau has certified to the U.S. that the Compact has been approved in accord with its constitutional processes. However, is it possible that this certification could be challenged in Palau's courts?

ANSWER: A court challenge has been initiated.

B23 If it is challenged, what do you see as the implications?

ANSWER: The Government of Palau has formally advised the U.S. that it denies the allegations in the suit that has been filed, and urges that the U.S. approval process not be delayed. The Administration agrees. A lawsuit does not alter the present state of affairs in our relations with Palau. When the court rules, it is presumed that the Government of Palau will take the court's decision into account in conducting government-to-government relations with the U.S. and implementing the Compact.

B24 Has Palau considered the option of making a court challenge on this issue in order to resolve any question and preclude the possibility of future court action?

ANSWER: President Salii has stated that this was considered but rejected because the government was confident that its position was correct.

B25 In Section 324 Palau assures the U.S. of the right to operate nuclear capable or nuclear propelled vessels and aircraft within Palau without either confirming or denying the presence or absence of nuclear weapons. In your view is this a new position for Palau or a clarification of Palau's intent under the previous Compact drafts?

ANSWER: Section 324 recognizes that the U.S. needs operational authority to carry out its defense role as defined in the Compact. In light of U.S. agreement not to use, test, store or dispose of certain weapons in Palau, that government agreed that vessels and aircraft could operate in accordance with the policy of not confirming or denying what weapons we may or may not have aboard. Contrary to what some observers have suggested, this does not prevent Palau from determining if the U.S. is complying with its agreement not to use, test, store or dispose of the designated weapons in Palau.

B26 Article XIII, Section 6 of the Palau Constitution states: "Substances such as nuclear, toxic chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored, or disposed of within...Palau" without approval of 75% in a referendum. One difference between this provision and Article II, Section 3 is the inclusion of a prohibition on nuclear power plants. Would you please comment on why the Compact does not have a conflict with this section, particularly regarding the definitions of "nuclear power plant" and "nuclear powered vessel"?

ANSWER: The Government of Palau has determined that "nuclear power plant" refers to land-based power plants, not ship propulsion systems. It is also the position of that government that Article XIII, Section 6 does not apply on its face to approval of international agreements such as the Compact.

B27 If a court were to hold that a nuclear powered vessel should be considered to have a nuclear power plant, then how do you feel U.S. operating rights will be affected?

ANSWER: If the Government of Palau asserted this position based upon a court decision, and also changed its view with respect to the relevance of Article XIII, Section 6 to the approval of international agreements such as the Compact, the operating rights of the United States would remain unaffected in our view. We expect that the Government of Palau would seek to resolve this internal problem in consultation with us pursuant to the terms of the Compact.

B28 If such a conflict occurred, then how would it be resolved?

ANSWER: If Palau raised the matter in a manner that it became an issue in dispute under the Compact, then it would be resolved in accordance with the dispute resolution provisions of Title Three of the Compact.

Attachment B.

Comparison of United States Government funding for Palau pursuant to the Compact of Free Association or to a continuation of the present Trusteeship arrangement.

	$ in millions Fiscal years			
	1yr total FY 1987	5yr total 1987-1991	14yr total 1987-2000	49yr total 1987-2035
Compact[1]	31.1	129.8	278.3	278.3
Trusteeship[2]	24.6	150.9	417.9	1824.9
Savings[3] due to Compact	-6.5	21.1	139.6	1546.6

Notes and Assumptions:

1. Compact amounts are portrayed in projected U.S. outlays, minus the outlays required for the first year after the effective date of the Compact which is assumed in this analysis to be FY 1986. On the basis of the U.S. outlays, Palauan receipts over the same period under the Compact are estimated at $950 million with the difference due primarily to the distributions to be made in years sixteen through fifty of the relationship from the trust fund created in the first year of the Compact's effectivness.

2. Trusteeship projections are built on the assumption that present levels of assistance will increase in accordance with the trend demonstrated during the 1981 through 1985 period. It should be noted that this amount assumes continuation of the present degree of application of federal programs and also assumes the maintenance of a Trust Territory headquarters function sufficient to serve Palau only. No option for U.S. military use of Palau is considered or included in the Trusteeship projections. Each of the last thirty-five years of continued Trusteeship outlays is projected at the fifteenth year level. Trusteeship projections do not constitute a proposal or official position of the Administration with respect to either continuation of the Trusteeship or to funding levels therefore.

3. Savings, also shown in the form of U.S. projected outlays, are in nominal dollars. The symbol "-" indicates negative savings or an overage in the Compact amount for 1987. This overage is eliminated in the third year of Compact funding.

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OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

Honorable James A. McClure
Chairman, Subcommittee
on Interior and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

May 8, 1986

Dear Mr. Chairman:

During the Subcommittee's May 1 hearing on the FY 1986 supplemental and FY 1987 regular Administration budget requests for the Compact of Free Association, you requested that I provide additional information regarding the Administration's interpretation of the provisions of the Compact and its implementing legislation with respect to the extension of United States federal programs to the freely associated states. The following statement is provided in response to your request and as a supplement to the comments made by the Administration witnesses at the Subcommittee hearing.

"The Compact of Free Association, in its Section 171, provides that all laws of the United States that had applied to the freely associated states during the Trusteeship period will cease in application on the effective date of the Compact unless their application is provided specifically in the Compact or its related agreements. The laws of the United States referred to in Section 171 include the laws that authorize the extension of United States federal programs to the freely associated states. With respect to the future applicability of federal program statutes to the freely associated states, the Compact provides, in Section 224, that federal programs and services additional to those already extended by the terms of the Compact can extend to the freely associated states on the basis of mutual agreement between the United States and the freely associated states and in accordance with the laws of the United States. Section 224 was drafted in this manner to protect the freely associated states from an undesired imposition of federal programs by the United States and to require that United States agreement to the extension of additional federal programs could only occur in accordance with, i.e. as authorized by, the laws of the United States. Nothing in the Compact implementing legislation (U.S. Public Law 99-239) alters this arrangement as the general rubric for the extension of additional federal programs. What P.L. 99-239 does do, however, is create eligibility for the freely associated states to participate, in competition with other recipients, in certain additional, and named, federal programs. As

was discussed in the May 1 Subcommittee hearing, eligibility was authorized by P.L. 99-239 for freely associate participation in the programs of the United States Legal Services Corporation, the United States Public Health Service and the Farmers Home Administration. Further, section 111 of P.L. 99-239 authorizes the eligibility of the freely associated states for participation in the federal programs and services names in paragraph (a) of that section. P.L. 99-239, however, does not appropriate funds and thus the level of freely associated state participation in the programs and services for which that law authorizes eligibility cannot now be predicted and remains to be resolved in accordance with the statutory and regulatory requirements that obtain with respect to each specific program."

I would be pleased to provide additional information to the Subcommittee if you desire.

Sincerely,

for James D. Berg
Political and Economic Officer

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